TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 28

KVOS, INC., PETITIONER,

vs.

THE ASSOCIATED PRESS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 7, 1936.

CERTIORARI GRANTED MAY 18, 1936.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 20, 1936.

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NAMES AND ADDRESSES OF SOLICITORS.

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States for the Western District of Washington, Northern Division

In Equity—No. 1087

THE ASSOCIATED PRESS, a corporation,

Complainant,

vs.

KVOS, INC., a corporation,

Defendant.

BILL OF COMPLAINT

To the Honorable the Judges of the District Court of the United States for the Western District of Washington, Northern Division:

Complainant for its bill of complaint against the defendant above named states and alleges:

1. That complainant is now and at all times herein named has been a corporation duly organized and existing under the laws of the State of New York and is now and at all times herein mentioned has been a resident and citizen of said State of New York and not a resident or citizen of the State of Washington.

2. That defendant is now and at all times herein named has been a corporation organized and existing under the laws of the State of Washington, and having its principal place of business at Bellingham in Whatcom County, in said State of Washington, being in the Northern Division of the Western District of Washington, and is now and at all

times herein mentioned has been a resident and citizen of said State of Washington and not of the State of New York. [2]

3. That the damage to which complainant is being subjected by the matters and things hereinafter set forth is in excess of the sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs, and the amount involved herein and in controversy herein is in excess of said sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs.

4. That complainant is a corporate organization and was incorporated in the year 1900 under the Membership Corporations Law, socalled, of the State of New York, and its members have been and are the proprietors or representatives of numerous newspapers, both morning and evening, published throughout the United States; that ever since its said organization, and in accordance with the powers granted by its Certificate of Incorporation, and pursuant to its by-laws duly enacted, complainant has been and still is engaged in gathering from sources all over the world, by means of its own instrumentalities, by exchange with its members, and by other appropriate means, any and all kinds of information, news and intelligence, telegraphic or otherwise, for the use and benefit of its members, and distributing the same among its members for publication in the newspapers owned or represented by them, under and subject to the provisions of complainant's by-laws.

5. That complainant has its own representatives in every important capital and city in the world; that it also has reciprocal arrangements with many important news agencies in foreign countries for the interchange of news; that complainant has more than twelve hundred (1200) members, each owning or representing a daily newspaper in the United States; [3] that each of these members, as required by said by-laws, supplies to complainant the local news gathered by the newspaper represented by such member; that all news thus collected by complainant is promptly transmitted by wire or telephone or other appropriate means, to its members for publication in their newspapers; that complainant is thus able to assure to its members the prompt collection and transmission of news from every point in the world where any event of importance may occur; that in addition to the great cost of collecting local and foreign news, which complainant thus obtains by interchange with its members and with foreign news agencies, the direct expense of gathering news and intelligence, which it obtains through its own agents, and of transmitting such news and intelligence to its members, is very great, amounting each year to many millions of dollars; that the cost of obtaining and transmitting such news is equitably divided amongst said members in accordance with provisions of said by-laws.

6. That said service of complainant is of great financial and business importance to its members for the reason that it is practically impossible for any one of such members alone to establish or maintain

the organization requisite for collecting all of the news of the world, or any substantial part thereof; that aside from the administrative and organization difficulties thereof, the financial cost is so great that no single newspaper acting alone could sustain it; that said service, or similar service, of world-wide collection of news is essential to the conducting of modern daily newspapers and can be obtained only by some such cooperative organization or system, or by purchase of news from some one or more of various [4] existing news agencies which are privately owned; that aside from the business importance of said service to members of complainant corporation, and newspapers represented by them, said service of complainant, conducted as aforesaid, is of great public importance in that it provides an issuance of accurate and impartial news service to the public.

7. That the value of such news service thus furnished by complainant to its members largely depends upon the promptness of such service and the accuracy and impartiality of such news, and also upon the requirement that the news of the day shall be transmitted by complainant to its members earlier than such information can be furnished to other competing newspapers, and that such news or information collected by complainant shall not be furnished to other newspapers which are not represented by members of The Associated Press and do not contribute to the expense of gathering such news; that an essential part of such plan of operation of complainant accordingly is that news col-

lected by it shall remain confidential and secret until its publication has been fully accomplished by all of complainant's members, for the reason that otherwise competing newspapers and other competing news agencies, which bear no part of the cost, would unfairly and inequitably receive the benefit of such service, and such a result would ultimately greatly impair the usefulness of complainant to its members and imperil its existence; that accordingly the by-laws of complainant, to which each of its members agree upon assuming membership, provide that news received through complainant's service is received exclusively for the purpose of publication in the specific newspaper, language and place specified in the member's Certificate, and that the members shall permit no other use to be made of it whatever, and [5] also that no member shall furnish or permit anyone in his employ, or connected with the newspaper specified in the said Certificate, to furnish any of complainant's news in advance of publication to any person who is not a member, or to furnish even to another member, any news received from complainant which complainant itself is debarred from furnishing to such member, or to conduct his business in such manner that the news furnished by complainant may be communicated to any person, firm, corporation or association not entitled to receive the same; or to furnish or permit anyone else to furnish to anyone outside of the membership of complainant, any of the news which he is required by the said by-laws to supply to the complainant, including the local news gathered by each member. [6]

8. That the above named defendant, KVOS, INC., a corporation, conducts and operates in the City of Bellingham, Whatcom County, Washington, a certain radio station commonly known and referred to as KVOS, which radio station conducts a broadcast daily from 7:00 o'Clock in the morning to 11:00 o'clock in the evening, said broadcast consisting of programs of substantially the same kind and sort as are commonly given from radio broadcasting stations.

9. That as a part and feature of the daily program broadcasted from said radio station three times daily, is conducted what it styles and describes as news broadcasts, or the newspaper of the air; that the first of such news broadcasts each day is conducted from 9:15 to 9:45 o'clock A. M.; the second from 12:15 to 12:45 o'clock, during the noon hour, and the third and last from 7:00 to 7:45 o'clock in the evening; that in each of said broadcasts the defendant, through its servants or agents, proceeds to announce by radio what the defendant claims to be and what in fact usually is, as more fully hereinafter set forth, the leading, most prominent and most interesting news events of the day.

10. That there is published at said city of Bellingham a certain newspaper called "The Bellingham Herald", both evening and morning editions, except Monday morning of each week, and a Sunday morning edition thereof, which said newspaper, The Bellingham Herald, is represented by a membership in the complainant and complainant is entitled under provisions of its by-laws aforesaid, to

be furnished by said The Bellingham Herald, with all the news of the territory served by said The Bellingham Herald, such territory being determined under the provisions of [7] said by-laws of the Board of Directors of the complainant, and also as provided by said by-laws, said, The Bellingham Herald, agrees not to furnish the news from said territory to anybody not a member of complainant corporation; that there is also published at Seattle, in the County of King, in the State of Washington, said city of Seattle being approximately ninety-three miles distant from the city of Bellingham, certain daily newspapers, namely, Seattle Post Intelligencer, and The Seattle Daily Times, each of which newspapers are represented by memberships in complainant corporation, and as to each of which complainant has the same identical rights with reference to news as herein set forth concerning said The Bellingham Herald.

11. That defendant conducts said news broadcasts as a part of its business of operating and conducting said radio station; that said radio station is a business and enterprise conducted by defendant for profit, the profit being derived by sale of time over said radio station for advertising purposes, to persons, firms and corporations who desire to advertise some particular business or product, and to purchase time from said radio station in which to advertise and promote the business or product conducted by such advertising persons, firms and corporations; that the value of such time for advertising purposes over such radio station depends

practically entirely upon the popularity of said station, that is, upon the number of persons who commonly and usually listen to the programs broadcasted by such station; that the object and purpose of said news broadcasts by the defendant over said KVOS is to popularize said radio station by making said program [8] interesting through news broadcasts and thereby to induce a greater number of persons to listen to said programs, thereby enhancing the value of time over said broadcasting station for such advertising purposes.

12. That a large, and in most instances the major, portion of the revenue derived by members of complainant corporation is made up of sale of space in said newspapers for advertising purposes; that the value of such advertising space depends largely, if not almost entirely, upon the number of readers that the particular newspaper has, and the number of readers depends practically entirely on the freshness and the interest of the news, intelligence and information contained in said newspaper; that such news ceases to be fresh and of interest after it has become generally known and that what is commonly known and referred to as "news value" of news, intelligence and information is practically destroyed as soon as or shortly after such news, intelligence and information becomes generally known.

13. That by virtue of the matters and things hereinbefore stated, defendant, in conducting said radio station, has become and is a competitor of complainant and the various members of complain-

ant corporation in the obtaining and distribution of news, intelligence and information, and said competition necessarily involves rivalry and business competition in being the first to obtain and distribute news, intelligence and information for the purpose of popularizing and making more attractive the respective advertising mediums. [9]

14. That defendant in conducting and carrying on said competition has not and does not carry on or conduct any organization of its own for the purpose of gathering or obtaining news except as to some local items, as to which complaint is not here made, and does not purchase news from any news agency, but on the contrary regularly and continuously follows the practice of what is commonly known and referred to as "pirating" the news, intelligence and information gathered at great expense by complainant and members of complainant corporation, said practice of pirating being more fully hereinafter set forth and described.

15. That each morning at said broadcast from 9:15 to 9:45 o'clock defenda t regularly obtains copies of the morning editions of the said The Bellingham Herald and Seattle Post Intelligencer, and systematically reads therefrom the whole or most important paragraphs or parts, sometimes verbatim and sometimes slightly rearranging the wording of the most important and most interesting news items in said newspapers, including the items furnished to said newspaper by complainant as aforesaid, and also including the items gathered by said newspapers as local news, and all belonging to complain-

ant as aforesaid; that at said broadcast in the evening of each day, except Sunday, from 7:00 to 7:45 o'clock, the defendant regularly obtains copies of the latest editions of said The Bellingham Herald, evening edition, and The Seattle Daily Times, and systematically reads therefrom, sometimes verbatim and sometimes slightly rearranging the wording of the most important and most interesting news items in said newspapers, including the items furnished to said newspapers by complainant as aforesaid, and also including the items gathered by said newspapers as local news, and all belonging to complainant as aforesaid. [10]

16. That said morning edition of said The Bellingham Herald used by defendant as aforesaid, regularly and uniformly contains all of the news, intelligence and information that has been furnished by complainant to said The Bellingham Herald up to the time of publication of said edition, and covers all of the leading, most important and most interesting events in the world during the preceding day and up to the conclusion of business hours of the preceding day, and in fact up to the time of said morning edition of said The Bellingham Herald going to press at approximately 3:30 o'clock A. M. of each day; that the morning edition of the said Seattle Post Intelligencer so used by defendant as aforesaid, includes all of the news furnished by complainant to the said Seattle Post Intelligencer up until 11:30 o'clock in the evening of the day before, and covers an account of all of the most interesting and most important news in the world

up to 11:30 o'clock in the evening of such day; that said evening edition of said The Bellingham Herald used by defendant as aforesaid, regularly and uniformly includes all of the news furnished and owned by complainant to said The Bellingham Herald up to 4 o'clock in the afternoon of each day, and covers all and the most interesting and most important news of the world up to 4 o'clock in the afternoon of that day; that said evening edition of The Seattle Daily Times so used by defendant as aforesaid, regularly and uniformly includes all of the news furnished and owned by complainant to said The Seattle Daily Times up to 10 o'clock in the forenoon of that day, and covers an account of all of the most interesting and most important news in the world up to 10 o'clock in the forenoon of that day; [11] that all of said news has been gathered as aforesaid by complainant at tremendous expense, and solely for the purpose of transmission to its members in the manner and upon the basis hereinbefore set forth; that said respective editions of The Bellingham Herald, both morning and evening, and of Seattle Post Intelligencer, and of The Seattle Daily Times also regularly and uniformly include and contain what is commonly known as "local news", meaning news which has been gathered by the news gathering organizations maintained by said respective newspapers; that as to such local news complainant under the reciprocal arrangements hereinbefore described with said newspapers, is entitled, exclusively of other news gathering or disseminating organizations or

agencies, to receive said local news for transmission to members of complainant; that said local news is of great value to complainant in that the dissemination of the same to members of complainant is part of the service rendered by the complainant, and constitutes complainant's method of obtaining and disseminating news which arises in the territory served by said respective newspapers.

17. That numerous newspapers represented or included in the membership of complainant circulate to a greater or lesser extent, and have subscribers to a greater or lesser extent in the territory served by said radio station, which territory extends for a radius of seventy-five to one hundred miles from the said city of Bellingham, depending upon the atmospheric conditions and other conditions affecting radio broadcasting; that a large portion, which portion as complainant is informed and believes, and therefore alleges is [12] not less than sixty per cent of the persons residing within said territory, either own radios or have access to radios, practically all of which persons are actual or potential readers and subscribers of the various newspapers published by members of complainant corporation; that said newspapers are distributed through said territory by various means, including the United States mails, carrier service maintained by said individual newspapers, and other means of distribution; that the circulation and distribution of said newspapers through said territory is practically entirely by means of railroad or motor transportation and as to all points outside of the city, where each newspaper is published, a period of

from not less than two (2) or three (3) hours up to twenty-four (24) hours or more necessarily elapses from the publication of said respective newspapers before the same are delivered to and actually reach the readers and subscribers thereof.

18. That through said practice hereinbefore set forth of pirating said news and broadcasting same, the defendant regularly appropriates news, which has been gathered at great expense, as aforesaid, by complainant, and to which complainants members are entitled, and throughout said territory served by said radio station broadcasts and makes said news known to the general public several hours in advance of the time when newspapers published by members of complainant corporation can reach actual or potential subscribers thereof; that thereby and by said practice, defendant, for its own profit, and for enhancement of its own business, in effect, appropriates the product of the efforts and industry of complainant and members of complainant corporation; that by said practice of making said [13] news generally known to the public in said territory before said newspapers can be distributed among the public, said news is, to a large extent, rendered old, stale and uninteresting, and no longer news, and said practice greatly impairs and detracts from the attractiveness of said newspapers, and works a direct and irreparable injury to complainant in complainant's said business and to members of complainant corporation.

19. That for all of the reasons hereinbefore stated, said practice of appropriating and pirating said news is and constitutes unfair competition by

defendant as against complainant; that by the aforesaid acts of defendant and by the said practice of the defendant, complainant has been and is being wrongfully deprived of the just benefits of the labors and expenditures aforesaid on the part of complainant, and members of complainant corporation have been and are being similarly injured; that complainant has also been further prejudiced and is being further prejudiced by dissatisfaction among its members due to the fact that defendant is thus able to spread and disseminate throughout said territory in advance of dissemination by said members, the same identical news which is paid for by said members.

20. That complainant has made frequent requests and demands of defendant that defendant desist from said practice of so pirating said news, and has fully explained, or caused to be explained to defendant all of the matters and things hereinbefore stated, but defendant has uniformly refused to desist from said practice, but proposes to continue with the same and, in fact, does intend to continue the aforesaid practice and will do so unless restrained from so doing. [14]

21. That defendant does not have and has never had the permission of complainant, or any member of complainant corporation, to make use of said news gathered by complainant and its members as aforesaid.

22. That future continuance of said practice on the part of defendant will increasingly cause the aforesaid irreparable injury and damage to complainant, in that complainant's efforts and expendi-

tures to gather and obtain news will be rendered largely without reward or value so far as concerns said territory served by said radio station.

23. That complainant is without any speedy, complete or adequate remedy at law, or otherwise, except by interposition of this honorable Court by its Order of Injunction, enjoining and restraining defendant and all of its officers, agents or employees from committing or aiding in, advising or encouraging the commission of any of the acts hereinbefore complained of, and enjoining and restraining continuance of the practice herein set forth; that it is necessary that such injunction issue to prevent the continuance of said acts and of said practice.

WHEREFORE: Complainant prays

First: That the defendant answer the several matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated and as if the defendant was particularly interrogated in respect thereto.

Second: That a Writ of Injunction may be issued out of and under the seal of this Court to be directed to the defendant and its officers, agents, servants, employees, assigns and successors and all others acting for defendant, and all persons aiding or abetting them, or any of them, and all persons whomso- [15] ever, to restrain them perpetually from and after the time they have knowledge of the existence of said Writ, from pirating, appropriating, using or disseminating to the general public, through the broadcasts herein described, news gathered and obtained through the labor and

expenditure of complainant, or members of complainant corporation, during such period as said news retains and has commercial value as news to complainant and its members.

Third: That a temporary Injunction issue herein to the same identical tenor and effect as with reference to the permanent Injunction herein prayed for, said temporary Injunction to be in full force and effect pending final determination of the issues herein.

Fourth: That the complainant may have such other, further and different relief in the premises as may be deemed just and equitable.

Fifth: That a Writ of Subpoena directed to the defendant may issue, commanding the defendant at a certain day and under a certain penalty, to be therein provided, to be and appear before this Honorable Court, and then and there full, true and correct answer make to this Bill of Complaint (but not under oath, answer under oath being hereby waived) and further stand to perform and abide by such further orders, directions and decrees as said Honorable Court shall deem fit.

And complainant will ever so pray.

C. W. HOWARD
J. W. KINDALL
Attorneys and Solicitors for Complainant
Office and Post Office Address: 206 First National Bank Building, Bellingham, Washington. [16]

State of Washington,
County of Whatcom—ss

HAROLD TURNBLAD, being first duly sworn on his oath deposes and says: That he is Chief of the Seattle, Washington Bureau maintained by The Associated Press, Complainant in the above entitled action, and as such has charge of and supervision over the news service of said complainant in and throughout Western Washington; that affiant has read the above and foregoing Bill of Complaint, and knows the contents thereof, and has knowledge of the matters and things therein stated; that said Bill of Complaint is true of Affiant's own knowledge, except as to matters therein stated as alleged on information and belief, and as to such matters Affiant believes the same to be true.

HAROLD TURNBLAD

Subscribed and sworn to before me this 13th day of November, 1934.

[Seal] J. W. KINDALL
Notary Public in and for the County of Whatcom, residing at Bellingham.

[Endorsed]: Filed Nov. 13, 1934. [17]

[Title of Court and Cause.]

AFFIDAVIT

State of Washington,
County of Whatcom—ss

J. W. KINDALL being first duly sworn, on his oath deposes and says:

That he is one of the attorneys and solicitors for the Complainant herein, and is authorized to make and does make the application hereinafter contained for and in behalf of Complainant.

That the application hereinafter contained is based upon this affidavit, upon the verified Bill of Complaint herein, and upon the affidavits of Hallock E. Reeves, Charles L. Sefrit, Ben H. Sefrit, W. C. Carver, Harold Turnblad, and Frank I. Sefrit which are annexed hereto, said Bill of Complaint and said affidavits being a part of the records and files herein, and being made a part of this Affidavit the same as if fully and completely set forth herein.

That as fully appears by the specific facts set forth in said Affidavits and in said verified Bill of Complaint, immediate and irreparable loss or damage will result to Complainant unless defendant is restrained, pending hearing on application for a temporary injunction herein, from following [18] the practices complained of herein; that as appears from said Bill of Complaint and from said Affidavits, daily increasing and immediate and irreparable loss or damage is being caused to Complainant by the carrying on of said practice by Defendant, and further immediate and irreparable loss and damage will occur to Complainant unless said practice is forthwith restrained; that it is necessary, pending final determination hereof, that a temporary injunction issue herein out of and under the seal of this Court, to be directed to the Defendant and its officers, agents, servants, employees, assigns and successors, and all others acting for

the Defendant, or any of them, to restrain them from and after they have knowledge of the existence of said writ, from pirating, appropriating, using or disseminating to the general public, through the broadcasts described in the Bill of Complaint herein, news gathered and obtained through the labor and expenditure of Complainant or members of Complainant during such period as such news retains and has commercial value as news to Complainant and its members; that such news does have such commercial value under the conditions set forth in the Bill of Complaint herein for a period of not less than twenty-four (24) hours after its first publication by members of the Complainant corporation; that it is further necessary to prevent immediate and irreparable damage and loss to Complainant that pending hearing on said application for a temporary injunction that a temporary restraining order issue herein, restraining the Defendant, its officers, agents, servants, employees, assigns and successors, and all others acting for the Defendant, from pirating, appropriating, using or disseminating to the general [19] public, through the broadcasts described in the Bill of Complaint herein, news gathered and obtained through the labor and expenditure of the Complainant or members of the Complainant corporation during such period as said news retains and has commercial value as news to Complainant and its members, being during said period of not less than twenty-four (24) hours from first publication thereof as aforesaid.

WHEREFORE, Complainant prays that pending final determination hereof, a temporary injunction may be issued out of and under the seal of this Court, to be directed to the Defendant and its officers, agents, servants, employees, assigns and successors, and all others acting for Defendant, enjoining and restraining them from and after the time they have knowledge of the existence of said writ, from pirating, appropriating, using or disseminating to the general public, through the broadcasts described in the Bill of Complaint herein, news gathered and obtained through the labor and expenditure of Complainant or members of Complainant corporation, either bodily, or by excerpts, by rearrangement, or after rewriting it, during such period as such news retains and has commercial value as news to Complainant and its members, being for a period of not less than twenty-four (24) hours after first publication of such news in a newspaper published by a member of Complainant corporation; and Complainant further prays that pending hearing upon such application for such temporary injunction that a restraining order issue herein to the same identical tenor and effect as with reference to the temporary injunction herein prayed for.

J. W. KINDALL

Subscribed and sworn to before me this 10th day of November, 1934.

[Seal] HAROLD LAMB

Notary Public in and for the State of Washington, residing at Bellingham. [20]

[Title of Court and Cause.]

AFFIDAVIT

State of Washington,
County of Whatcom—ss

FRANK I. SEFRIT, being first duly sworn, on his oath deposes and says:

That he is now and at all times herein named has been General Manager of a daily newspaper published in Bellingham, Washington, known as The Bellingham Herald, referred to in the Bill of Complaint herein, and in charge of the business and affairs thereof; that said The Bellingham Herald is the only newspaper in Bellingham, Washington, which has membership in the Complainant herein and said The Bellingham Herald has never in any manner whatsoever given permission to defendant herein to broadcast or announce any news appearing therein, whether procured by said The Bellingham Herald through its own sources or through Complainant or otherwise, but has on the contrary strongly objected to the practices being pursued by said defendant radio station as set forth in the Bill of Complaint herein, and that the defendant has persisted in said practice in spite of said [21] objections.

FRANK I. SEFRIT

Subscribed and sworn to before me this 10th day of November, 1934.

[Seal] J. W. KINDALL
Notary Public in and for the State of Washington, residing at Bellingham. [22]

[Title of Court and Cause.]

AFFIDAVIT

State of Washington,
County of King—ss

HAROLD TURNBLAD, being first duly sworn, on his oath deposes and says:

That he is the Chief of the Associated Press Bureau, maintained by the Complainant above named, at Seattle, Washington, and as such Chief of such Bureau is in charge and supervision of the news service of Complainant in the State of Washington.

That Affiant knows and is familiar with the By-Laws of Complainant, and has in his possession a printed copy thereof, that the same are as set forth and described in the Bill of Complaint herein.

That Article 8, Sections 3, 4, 5, 6, and 7 of said By-Laws read as follows:

To receive and furnish news.

"Sec. 3. Each member shall take the news service of the Corporation and publish the news regularly in whole or in part in the newspaper named in the Certificate of Membership. Each member shall also promptly furnish to the Corporation, through its agents or employees, all the news of such member's district, the area of which shall be determined by the Board of Directors. [23]

What news to be furnished

"Sec. 4. The news which a member shall

furnish as herein required shall be all such news as is spontaneous in its origin, but shall not include any news that is not spontaneous in its origin, or which has originated through deliberate and individual enterprise on the part of such member or of the newspaper specified in such member's certificate of membership.

To guard news report

"Sec. 5. No member shall furnish, or permit any one in his or its employ or connected with the newspaper specified in his or its certificate of membership to furnish, to any person who is not a member, the news of the Corporation in advance of publication, or to another member any news received from the Corporation which the Corporation is itself debarred from furnishing to such member, nor conduct his or its business in such a manner that the news furnished by the Corporation may be communicated to any person, firm, corporation or association not entitled to receive the same.

Sale of news by members.

"Sec. 6. No member shall furnish, or permit any one to furnish, to any one not a member of this Corporation, the news which he or it is required by the By-Laws to supply to this Corporation.

"Sec. 7. Members shall print in their newspapers such credit to the Corporation, or to any paper or other source from which news may

be obtained, as shall be required, from time to time, by the Board of Directors.

That Article 7, Sections 2, 4, 5, 6 and 8 of said By-Laws read as follows:

Receipt of news Service

"Sec. 2. Each member shall be entitled, upon compliance with the provisions of the By-Laws, to receive a service of news for the purpose of publication in the newspaper specified in such member's certificate of membership and for that purpose only. The nature and extent of the news service to be so received by the member shall be determined by the Board of Directors, upon the member's admission, and the initial dues or assessment shall be fixed at the same time and by the same authority, subject, however, to change as hereinafter provided in Article IX. [24]

Who may receive news.

"Sec. 4. The news service of this corporation shall be furnished only to the members thereof, or to the newspapers owned by them and specified in their certificates of membership.

Use of News

"Sec. 5. A member shall publish the news of The Associated Press only in the newspaper, the language and the place specified in such member's certificate of membership and shall not permit any other use to be made of the news furnished by the Corporation to the newspaper

which such member owns. Only the place specified in the certificate of membership shall appear in the title, name or heading of the newspaper wherein the news of The Associated Press is published.

Hours of Publication

"Sec. 6. The time limits for the receipt and publication of news by members shall be (standard time in all cases at the place of publication) as follows: Morning papers to receive not later than 9 A. M. and to publish not earlier than 9 P. M., except that for editions to be circulated only outside of the city of publication not earlier than the following morning, morning papers may publish not earlier than 5 P. M. and that Sunday editions so published may be circulated in the city of publication after 8 P. M. Saturday; afternoon papers to receive not later than 6 P. M. and to publish not earlier than 9 A. M., the service to afternoon papers between 4 P. M. and 6 P. M. to be of bulletin character; provided, that the Board of Directors may authorize that upon extraordinary occasions The Associated Press dispatches may be used in extra editions or for bulletins outside of the hours named.

Association to protect news.

"Sec. 8. No news furnished to the Corporation by a member shall be supplied by the Corporation to any other member publishing a newspaper within the district which the Board

of Directors shall have described in defining the obligations of such member to furnish news to the Corporation."

That under date of December 13, 1933 Complainant, through Kent Cooper, its Secretary, caused to be sent to Mr. Rogan Jones, Manager of defendant radio station, at Bellingham, Washington, by United States mail, a letter, a true copy of which is hereto attached marked "Exhibit A" and by this reference made a part of this affidavit, and that under date of September 27, 1934 affiant sent by registered United States mail from Seattle, Washington, to Mr. Rogan Jones, Manager of defendant radio station, at Bellingham, Washington, a letter, a true copy [25] of which is as set forth in "Exhibit B" hereto attached and by this reference made a part hereof, which letter defendant duly received; that the Complainant has given no permission to defendant to use or broadcast any of the news to which Complainant is entitled, whether the same be gathered by its own news sources from outside the district surrounding the City of Bellingham or Seattle, or whether it be local news gathered by any of Complainant's members.

HAROLD TURNBLAD

Subscribed and sworn to before me this the 13th day of November, 1934.

[Seal] J. W. KINDALL

Notary Public in and for the State of Washington, residing at Bellingham. [26]

"EXHIBIT A"

December 13, 1933.

VIA AIRMAIL

(Registered)

Mr. Rogan Jones,
Manager, Radio Station KVOS,
Bellingham, Wash.

Dear Sir:

We have information that Associated Press news and local news to which The Associated Press is exclusively entitled is being taken by your station from newspapers which are members of The Associated Press in your section, and utilized by you for news broadcasting purposes.

This is formal notice that you do not have the right to do this and that the practice must be discontinued. The Supreme Court of the United States has held that The Associated Press has a property right in its news and it may not be republished by anyone without the consent of The Associated Press so long as it has news value.

In a recent suit against a radio station at Sioux Falls, S.D., which was doing just what you are doing, The Associated Press in Federal Court has been granted an injunction against the station. In case you decline to acquiesce promptly in this demand that you cease use of any news of The Associated Press or the local news of Associated Press newspapers, we shall have to proceed legally against you.

Kindly acknowledge receipt with assurances you will discontinue.

Sincerely yours,

Secretary, The Associated Press.

Kent Cooper-M [27]

"EXHIBIT B"

Sept. 27, 1934.

By Registered Mail

Mr. Rogan Jones,
Manager, Radio Station KVOS,
Bellingham, Wash.

Dear Sir:

This is to reiterate our objection to the unauthorized use by station KVOS of Associated Press news from Bellingham and other newspapers. We have been reliably informed that the offense has continued despite a warning from our General Office in New York in an airmail letter dated December 13, 1933.

In that letter, Kent Cooper, Secretary of The Associated Press, wrote you as follows:

"We have information that Associated Press new and local news to which The Associated Press is exclusively entitled is being taken by your station from newspapers which are members of The Associated Press in your section, and utilized by you for news broadcasting purposes.

"This is formal notice that you do not have the

right to do this and that the practice must be discontinued. The Supreme Court of the United States has held that The Associated Press has a property right in its news and it may not be republished by anyone without the consent of The Associated Press so long as it has news value.

"In a recent suit against a radio station at Sioux Falls, S.D., which was doing just what you are doing, The Associated Press in Federal Court has been granted an injunction against the station. In case you decline to acquiesce promptly in this demand that you cease use of any news of The Associated Press or the local news of Associated Press newspapers, we shall have to proceed legally against you."

Please acknowledge receipt of this, the second notice, with assurances you will discontinue.

Sincerely,

Harold Turnblad. Chief of Bureau. [28]

[Title of Court and Cause.]

AFFIDAVIT

State of Washington,
County of Whatcom—ss

HALLOCK E. REEVES, CHARLES L. SEFRIT, BEN H. SEFRIT and W. C. CARVER each being duly sworn on his oath deposes and says, each for himself and not one for the other:

That affiant Hallock E. Reeves is now and at all

times herein named has been night-editor of The Bellingham Herald, employed thereon as such, the said The Bellingham Herald being the same newspaper referred to in complainant's bill of complaint, and published in Bellingham, Washington;

The said CHARLES L. SEFRIT, that he is now and at all times herein named has been Business Manager of the said The Bellingham Herald;

The said BEN H. SEFRIT, that he is now and at all times herein named has been Reporter on said The Bellingham Herald;

The said W. C. CARVER, that he is now and at all times herein named has been editor of the said The Bellingham Herald.

That affiant is familiar with the wave length used by radio station KVOS, being the radio station KVOS referred to in said bill of complaint, and affiant has frequently and for a [29] period of several years listened to programs broadcasted from said radio station and is familiar with the voices of the various announcers over said radio station; that in each instance hereinafter set forth when affiant listened to said broadcasts, affiant obtained the same on the radio used by affiant in Bellingham, Washington, through the exact wave length for obtaining said radio station, and recognized the voice of the announcer as an announcer for said radio station, and knows of his own knowledge that on each of said occasions affiant was listening to a broadcast from said radio station KVOS;

That affiant CHARLES L. SEFRIT listened to a socalled news broadcast from said radio station on

the following dates in the year 1934: April 12 and 18; May 5, 10, 14, 17 and 31; August 2, 3, 4, 6, 7, 8, 9, 10, 13, 14, 20, 21, 23, 27 and 29; September 3, 4, 6, 8, 10, 13, 17, 18, 21, 22, 24, 25 and 29; October 8, 10, 18 and 25, and November 5;

That affiant HALLOCK E. REEVES listened to the socalled news broadcast from said radio station on the following, among other dates, in the year 1934: April 30; May 1, 2, 4, 15, 18, 21, 23, 30; June 1, 2, 4, 11, 17 and 18; October 11, 16, 23 and 24; November 3 and 7;

That affiant BEN H. SEFRIT listened to the so-called news broadcast from said radio station on September 28, 1934;

That affiant W. C. CARVER listened to the so-called news broadcast from said radio station on August 24, 1934;

That affiants CHARLES L. SEFRIT and HALLOCK E. REEVES listened to the socalled news broadcast from said radio station in the year 1934 on August 15, and 16; October 1, 12, 15, 17, and 22, and November 8. [30]

That in reading the articles hereinafter set forth and referred to said announcer in each instance read from Associated Press dispatches, or from local news in the newspapers hereinafter mentioned, belonging to the Associated Press, in some instances reading verbatim either the whole of said articles or the most interesting portions thereof, including the details of said articles; that in some instances affiant would tune in the radio on which affiant was listening, to the wave length of said radio station

KVOS, at the time when the announcer of said radio station would be reading said articles, which were verbatim and would thereafter continue verbatim, reading verbatim from such Associated Press articles, thus showing and indicating that said announcer had prior to the time when affiant would tune in said radio been reading from such Associated Press dispatches or news; that in some instances in the body of the article the dispatch as published and printed in the particular newspaper from which said announcer might be so reading would credit the news article to the Associated Press in words such as and similar to "According to the Associated Press" or "The Associated Press reports", which language just quoted said announcer would omit in his broadcast of said articles so containing said words.

For the morning broadcast from said radio station from approximately 9:15 to 9:45 o'clock the announcer of said radio station would regularly procure the morning edition of said The Bellingham Herald and said Seattle Post Intelligencer, referred to in complainant's bill of complaint herein, and for the evening broadcast of said radio station from about 7:00 to 7:45 o'clock the announcer for said radio station would [31] regularly procure the evening copies of the evening edition of the said The Bellingham Herald and The Seattle Daily Times, all of which newspapers are mentioned and referred to in complainant's bill of complaint, and all of which newspapers carry regularly published dispatches from the Associated Press and carry local

news belonging to the Associated Press; that in each edition of said The Bellingham Herald the following is carried in a prominent place on the editorial page thereof:

> "Member of the Associated Press
> The Associated Press is exclusively entitled to the use for reproduction of all news dispatches credited to it or not otherwise credited to this paper, and also the local news published therein."

and likewise in The Seattle Daily Times is carried the following:

> "Member of Associated Press
> The Associated Press is exclusively entitled to the use for publication of all news dispatches credited to it, or not otherwise credited, in this paper, and also the local news published here."

and likewise, except on an advertising page in Seattle Post Intelligencer, is carried the following:

> "Member of The Associated Press
> The Associated Press*s* is exclusively entitled to the use for republication of all news dispatches credited to it or not otherwise credited in the paper, and also the local news published herein."

That affiant has been engaged in the newspaper business for many years prior to the date hereof and is familiar with the rules and practice of newspapers, and particularly of the newspaper afore-

said with reference to crediting the source of news and publishing the same; that in each instance in said newspapers where there appears a date line with the letters "(AP)" this means that the item in question was procured from, furnished and owned by the Associated Press, complainant herein, and where in the body of the article the dispatch or news item is credited [32] to The Associated Press with language to that effect, or in substance the same, this means that such item in question was likewise procured from, furnished and owned by The Associated Press, the complainant herein, this being a regular and uniform custom and practice followed by said newspapers at all times mentioned in the bill of complaint herein; that where there is no credit emphasized as above stated to The Associated Press or other News Agency, or to some special writer, this indicates that the item was procured by the newspaper itself through its own force of news gatherers and constitutes "Local News" owned by The Associated Press, complainant herein; that in some instances said radio station KVOS in a manifest and abortive attempt to disguise the pirating of said news as alleged in the bill of complaint herein, would endeavor to change or rewrite said Associated Press dispatches or news, instances of which are hereinafter set out, but that in each instance sufficient of the exact wording, sequence and general scheme of said dispatches and news would be copied and used by the announcer as to plainly indicate the pirating of said article as announced from the dispatches and news of complainant; that

in some instances said announcer would read from a socalled Summary of the news compiled by Seattle Post Intelligencer and would preface the reading of such summary by the announcement that later during the broadcast detailed stories of the Summary would be broadcast, and the announcer would thereafter broadcast the details verbatim from Associated Press dispatches and news in said newspaper carrying said Summary thereof; [33]

That when affiants listened to said broadcasts from said radio station as aforesaid, the announcer from said radio station read articles as follows from the respective newspapers indicated, and the particular affiant listened to said broadcast is indicated by his initials; that where said announcer may have read verbatim from any of said articles they are hereinafter set out without any explanatory item, and when said announcer may have interposed or changed the article from which the broadcast was attained or may have rewritten the same, then that particular fact is respectively hereinafter indicated, and in each of the following instances the broadcasts were listened to from said radio station on the date mentioned by the particular affiant whose initials are set forth in connection with each respective article hereinafter set out, from the respective newspaper, and on the respective date (in the year 1934) respectively mentioned, and if the article is form an Associated Press dispatch it is marked either "(AP)" or in language credited to The Associated Press, and if local news belonging to The Associated Press is marked "Local".

Each of the following instances are broadcast from said radio station on the dates mentioned, taken from the respective papers mentioned, and the broadcast as made was compared with the respective articles in such papers by the particular affiant whose initials appear at the head of said respective item.

(Here follows, verbatim, news items so broadcast by defendant) [34]

Affiants also listened to other broadcasts from said radio station which are not set forth herein, but which can be produced as additional proof herein if desired.

HALLOCK E. REEVES
CHARLES L. SEFRIT
BEN H. SEFRIT
W. C. CARVER

Subscribed and sworn to before me this the 10th day of November, 1934.

[Seal] J. W. KINDALL
Notary Public in and for the State of Washington, residing at Bellingham.

[Endorsed]: Filed Nov. 13, 1934. [35]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon reading and filing the duly verified Bill of Complaint herein, and upon reading and filing the

annexed Affidavits of Hallock E. Reeves, Charles L. Sefrit, Ben H. Sefrit, W. C. Carver, Frank I. Sefrit, and Harold Turnblad, and upon all of the records and files herein, and good cause therefrom appearing,

IT IS HEREBY ORDERED that the defendant above named appear before this Court, in the Court Room of said Court, in the United States Post Office Building, in the City of Seattle, King County, Washington, on the 19th day of November, A. D. 1934, at the hour of 10 o'clock in the forenoon of said day, then and there to show cause, if any the defendant has, why this Court should not issue herein a temporary injunction, enjoining the defendant, and its officers, agents, servants, employees, assigns and successors, and all others acting for the defendant, pending final determination of the issues herein, from pirating, appropriating, using or disseminating to the general public, through radio broadcasts, over radio station KVOS, being the radio station KVOS referred to in said Bill of Complaint, news [36] gathered and obtained through the labor and expenditure of complainant, or members of complainant corporation, during such period as said news retains and has commercial value as news to complainant and its members.

Let this Order, and the Affidavits hereto annexed be served upon the defendant forthwith; let all answering affidavits and papers be served upon Howard & Kindall, Attorneys for Complainant, with office and Post Office address at 206 First Na-

tional Bank Building, Bellingham, Washington, at least two days before the return date of this Order, and let all rebuttal papers, if any, be served upon the defendant, or upon the attorneys and solicitors appearing for the defendant at least one day prior to said return date.

And it further clearly appearing to the Court from specific facts shown by said verified Bill of Complaint, and by said affidavits, that immediate and irreparable loss or damage will result to complainant unless a temporary restraining order is issued herein, pending said hearing.

IT IS HEREBY ORDERED that pending said hearing, and pending decision of the Court upon said hearing, that the defendant, and its officers, agents, servants, employees, assigns and successors and all others acting for defendant, be and they hereby are restrained from and after the time they have knowledge of the existence of this Order, from pirating, appropriating, using or disseminating to the general public, through broadcasts over said radio station KVOS, news gathered and obtained through the labor and expenditure of complainant, or members of complainant corporation, either bodily or by excerpts, by rearrangement, or after rewriting it, during such period as such news retains [37] and has commercial value as news to complainant, and members of complainant corporation, said period to be not less than twenty-four (24) hours after the first publication of said news, in a newspaper which is a member of complainant

corporation. Let the complainant furnish proper bond in the sum of $1000.00 as required by statute forthwith.

DATED at Seattle, Washington, this 13th day of November, A. D. 1934.

BY THE COURT:

JOHN C. BOWEN
Judge

ATTEST:

[Endorsed]: Filed Nov. 13, 1934, at 10.07 A.M.

[38]

[Title of Court and Cause.]

UNDERTAKING

WHEREAS, the above named complainant has commenced, or is about to commence, an action in the above entitled court, against the above named defendant corporation and is about to apply for a temporary restraining order in said action, against the said defendant corporation, enjoining and restraining it from the commission of certain acts, as in the bill of complaint filed in the said action is more particularly set forth and described:

NOW, THEREFORE, the undersigned, The Associated Press, a corporation as Principal, and PACIFIC INDEMNITY COMPANY, a corporation of the State of California, Authorized to do business in the State of Washington, as Surety, in consid-

eration of the premises, and of the issuing of said temporary restraining order, does hereby undertake in the sum of ONE THOUSAND AND NO/100 ($1000.00), Dollars, and promise to the effect that. in case said temporary restraining order shall issue, the said complainant will pay to the said party enjoined, such damages, not exceeding the sum of ONE THOUSAND AND NO/100 ($1000.00) Dollars, as such party may sustain by reason of said temporary restraining order, if the said court finally decides that the [39] said plaintiff was not entitled thereto.

IN WITNESS WHEREOF, said The Associated Press, a corporation, and PACIFIC INDEMNITY COMPANY, *Company* has caused this undertaking to be signed and its corporate seal affixed by its duly authorized attorney-in-fact at Seattle, Washington, this 13th day of November, 1934.

THE ASSOCIATED PRESS,
By J. W. KINDALL,
Its Attorney.

[Seal] PACIFIC INDEMNITY COMPANY
By M. TURNER
Attorney-in-Fact.

The foregoing bond is hereby approved this 13th day of November, 1934.

JOHN C. BOWEN
Judge

[Endorsed]: Filed Nov. 13 1934 [40]

[Title of Court and Cause.]

MOTION TO DISMISS BILL OF COMPLAINT

Comes now the Defendant in the above entitled action, by its undersigned attorneys, and moves this Court for the following orders and an order dismissing the Bill of Complaint on the following grounds:

(a) That said Bill of Complaint does not recite facts sufficient to entitle Plaintiff to the relief prayed for, and is without equity;

(b) That the preliminary injunction should be denied because no grounds exist therefor;

(c) That the Plaintiff has a plain, speedy and adequate remedy at law, and this Court has no jurisdiction to award the relief prayed for, under the provisions of Sec. 284, Title 28, of the U. S. Code Annotated;

(d) That there is a non-joinder of parties Plaintiff in that the Bellingham Herald, the Post-Intelligencer and the Seattle Times, referred to in paragraph ten (10) of the Bill of Complaint, are necessary parties;

(e) That this Court has no jurisdiction of this case for the reason that the matter in controversy between the Complainant and the Defendant does not exceed the sum of three thousand ($3,000.00) dollars, exclusive of interest and costs; in fact an inspection of the allegations of the Complaint shows that it is impossible for the [41] Complainant to recover any amount in excess of said sum, or any other amount, and that the amount set out in the

ad damnum clause of the Complaint is not a true statement of Complainant's damage and is not alleged in good faith, the facts being that the amount paid to the Complainant for furnishing the Associated Press News to the City of Bellingham, to any of its members, is fixed and determined by the amount of population of the City of Bellingham, and is not effected at all by any other condition, and Complainant has not lost any amount and never will lose any amount by reason of this Controversy, and that defendant is not a competitor of Complainant in any sense of the word.

(f) That the court has no jurisdiction there being no diversified citizenship; that this action was brought by the Complainant and is collusive between the Complainant and the Bellingham Herald, for the purpose of creating a case cognizable in the Federal Court and is not made in good faith; that the Bellingham Herald is a necessary party Plaintiff, and has collusively been omitted because its joinder would destroy complete diversity as to citizenship, and for that reason Defendant asks that this case be dismissed; that the Bellingham Herald threatened suit against the Complainant and collusively secured Plaintiff to bring the action; that Plaintiff brings this action at the request of the Bellingham Herald and by its own attorneys, rather than the attorneys of the Associated Press, the Complainant; that no other party, other than the Bellingham Herald, is effected by this action or is injured, if there be an injury, as a result of the allegations of the Complaint;

(g) Defendant asks that this action be dismissed because the Bellingham Herald and the Complainant, The Associated Press, have been appropriating news acquired exclusively by Defendant and broadcasted over its station, and have treated this news as their [42] news after re-writing it, without any further investigation, and, therefor, Complainants do not come into Court with clean hands.

(h) That the Bellingham Herald is, the real party in interest in this suit and the Associated Press has no interest whatever in the same, and the Bellingham Herald is endeavoring to have a complete monopoly of all the news disseminated in the City of Bellingham. It has a monopoly of the Associated Press Service; it also has the service of the United States Press, under an agreement whereby it prevents any other newspaper or any radio station coming into Bellingham, from taking it, and attempt to control all of the channels of publicity in Bellingham through a complete monopoly, and this action is to prevent any new channels of publicity to the general public from operating in the City of Bellingham, unless the same be controlled by the Bellingham Herald, and such action shows that the Complainant bringing this action in the interests of the Bellingham Herald, does not come into Court with clean hands since its action is in violation of the Constitution of the State of Washington.

KENNETH C. DAVIS
WILLIAM H. PEMBERTON
Attorneys for Defendant. [43]

[Title of Court and Cause.]

AFFIDAVIT RESISTING APPLICATION FOR TEMPORARY INJUNCTION

State of Washington
County of King—ss

ROGAN JONES, being first duly sworn on his oath, deposes and says:

That he is the owner of the Defendant Radio station, KVOS, in the above entitled case, and makes this Affidavit in resistance to the Application for a Temporary Injunction.

That affiant has read the Affidavits submitted by HALLOCK E. REEVES, Night Editor, Bellingham Herald; CHAS. L. SEFRIT, Business Manager of the Bellingham Herald; BEN H. SEFRIT, Reporter on the Bellingham Herald, and W. C. CARVER, Editor of the Bellingham Herald, which Affidavits are relied upon by Complainant to secure its requested relief; affiant being advised by his counsel that there exists serious question as to whether said Affidavits contain legal and competent evidence, being in violation of the rule excluding hearsay evidence, and therefore incompetent and inadmissable, nevertheless, replies to and denies the allegations therein contained, on his information and belief.

That affiant is the President of and the Owner of Station KVOS, and at no time within the knowledge of affiant has said station appropriated, pirated, or taken any news of Complainant, or their

affiliates, or of its alleged members. Affiant obtains the [44] news reports which are used and broadcast by KVOS from the Radio News Association, Inc., 342 Madison Avenue, New York City, which is a news service used by KVOS under contract with said Association and this news is broadcast three or more times each day by short wave from New York, from 6:00 to 7:00 a.m.; 9:30 to 10:30 a.m.; 2:00 to 3:00 p.m. and 5:30 to 6:00 p.m.; all Pacific Standard Time. This is copyrighted news and is received by KVOS in continental code language by a licensed operator on a special high-grade and expensive receiving apparatus in Bellingham, Washington, over an antennae arranged, located and designed especially for this news feature, after long and expensive experimentation by affiants station.

Affiant believes and alleges that the news facilities and the news transmitted by the said Radio News Association is superior to the quality and facilities of the Complainant, and affiant alleges that therein lies the "rub" and the cause, as hereinafter set forth, of this lawsuit:

Affiant sets forth and makes a part of this Affidavit, Exhibit "A", which is a bulletin published by the Radio News Association, Inc., explaining the scope of this news service used by Defendant and the hours of its transmission. Affiant maintains this news program over KVOS for the purpose of giving new, up-to-the-minute and informative news, not yet printed in any newspaper.

Affiant has created his own means and methods for securing the news used by KVOS and these

means are entirely independent of the facilities of the Complainant Press Association. Affiant alleges that affiant not only has this right to do so, but that it is affiants duty to so furnish this news program, and it is a part of that public service which affiant is bound to give an interested.[45] public in order to justify the use of the radio frequency the Government of these United States has granted to KVOS.

Affiant has found in his experience in radio broadcasting, that his listeners look forward to this news broadcast as one of the stations most popular and informative features, and that live, hot, up-to-the-minute reports of news events of the nation and the world as they happen from hour to hour, night or day, are not only necessary but are in the public interest, and affiant could not very well depend upon this type of news from Complainant for the very simple reason that complainant does not supply news of that kind or character. On the contrary, if affiant should attempt to broadcast the news supplied by Complainant Association, affiant would, in the language used by United States Senatore Dill, the author of the Federal Radio Act, in a public address attacking the press associations attitude towards radio, "chloroform his radio listeners" because the news commonly available in newspapers, especially those in Bellingham, is unfitted for radio use, in that, most of that news supplied by Complainant for Bellingham newspapers is old, stale, sketchy and uninteresting to the average Radio audience, because News for radio use, must be un-

distorted and brief in order to be interesting; radio news includes a description of events while they are happening, such as news of the longshoremen's strike in Seattle, San Francisco, and the Pacific Coast cities last summer, and mentioned in Complainant's Affidavits; and the countless other news items, received from the numerous sources of affiant's news must be popular, alive, and up-to-the-minute.

Affiant maintains three qualified reporters who cover the usual sources of news in Bellingham and vicinity. Affiant broadcasts news items three or more times a day, whereas Complainant's news is only made available twice a day, and such news would [46] be stale and uninteresting for Defendants use, because Defendant has more than likely received and broadcasted the most interesting features of this news before complainant or their affiliates could even print the same.

Much news is provided KVOS voluntarily by different individuals in and around Bellingham by friends, and by city, county, and state officers, and officials, as well as by professional men, operators of ambulances and funeral parlors, and the usual sources where news is generally obtained.

The news schedules of other radio stations about the State are thoroughly searched and in many instances news items including news from Seattle and various parts of the State, are obtained from the radio station in the city or state where the news happens.

Affiant states that where there is a similarity between news furnished by Complainant and that of Defendant, that this similarity does not necessarily indicate pirating, because Complainant has no copyright either in law or fact on words and phrases.

Affiant conducts this beneficient, educational and public interest program of news and information as a feature of public service, and *the station does not make any charge to the public therefor.* Affiant assembles, collects and secures this news from only legitimate sources.

Affiant has employed L. H. Darwin, a newspaper man of many years' experience, to conduct this program of news, and the said Darwin has full charge and the responsibility of that program and the only restriction that affiant has placed on Mr. Darwin in conducting this program of news, is that he secure this news from the many legitimate sources available to KVOS, which affiant believes he has done. [47]

Affiant says that much of the local news which happens in and around Bellingham and other places about the State of Washington and the Northwest, and assembled by KVOS from other radio broadcasts, is treated, written, and re-written from the other broadcasts in much the same manner that any two or more authors may write on the same subject when they are using common materials for one purpose, that is to say,—"brief and interesting news for the public".

Affiant alleges and avers that Complainants are mistaking similarity of writing for piracy, without recognizing the common fact that the productions of

two or more authors on a common subject may contain the same thoughts, sentiments and ideas, and the resemblance may be identical, but common sense, honesty, and practical newspaper experience recognizes that, notwithstanding the likeness of two or more stories to one another, each one of those stories may be and probably are entirely original.

Affiant states and avers that it is highly significant that the only Affidavits alleging piracy on the part of Defendant, KVOS, are the Affidavits of the above-mentioned employees of the Bellingham Herald, which has been bitterly opposed to Defendant, KVOS, for political and competitive purposes; affiant alleges that Defendant KVOS, has been "scooping" the Complainant and the Bellingham Herald on practically all of the important and interesting news items, including both local and national news and affiant respectfully contends that this alleged evidence of piracy set forth by Complainant should be received carefully and scrutinized closely.

Affiant sets forth and avers that for several years the Bellingham Herald and the Defendant, KVOS, have been politically opposed to one another, and that the Bellingham Herald has viciously and bitterly attacked in written editorials the political stand of [48] Defendant Radio Station on numerous occasions.

That affiant purchased this station from Mr. Frank I. Sefrit, the present General Manager of the Bellingham Herald, and others when it was financially, technically and artistically bankrupt. Affiant has since made this station into a paying and solvent business of great interest and value to

the public. Immediately after the said station became so valuable and solvent, Frank I. Sefrit began a vicious and prolonged attack upon this Defendant station for the reason that KVOS began to show a prosperous advertising clientele and became a respected institution in the community.

That affiant has tried by every honorable means to cooperate with the Complainant and the Bellingham Herald, and at the same time to serve the best interest of the public, but the Complainant and the Bellingham Herald has refused to extend an even half-hearted greeting to Defendant's overtures.

That the Complainant and the Bellingham Herald often becomes libelously incensed over the Plaintiff offering much free time to all of the civic, social, fraternal, agricultural, religious and educational organizations of the Bellingham community, for no reason at all..

That just recently the Bellingham Herald, in flagrant efforts, and with published threats to put KVOS out of business, applied to the Federal Radio Commission for a license to operate a competitive radio station in the City of Bellingham.

This suit is the aftermath of political warfare between the Bellingham Herald and the Defendant, KVOS, and the alleged pirating is pure nonsense, and in all events, impossible of happening, for the reason that the Defendant is supplied with a better, fresher and move interesting supply of news than complainant could furnish. Affiant says that if there is any justification for [49] this suit, the Bellingham Herald should be joined as a Plaintiff because it jealously threatened suit on this subject in its

own name as far back as December 8, 1933, and Defendant KVOS has no quarrel with this Complainant because KVOS does not compete with and cannot injure Complainant Associated Press in any manner whatsoever.

Affiant states that there is no necessity for a Temporary Injunction to issue in this case, and the facts of this case could be thrashed out on its merits in the near future without Defendant having the odium of bearing a preliminary injunction, and which the Complainant and the Bellingham Herald would use for political purposes; that a hearing on the merits of this matter will result in a dismissal in favor of Defendant for lack of evidence.

That Complainant's Complaint is frivolous and their alleged damages are so remote as to not even be nominal. Affiant states that the Complainant has lost no subscribers, and its charges are made upon the population of the cities served by its member-newspapers, and not by the circulation or the advertising volume of any of said member newspapers. That said damages are too remote and indirect to warrant a preliminary injunction, and more irreparable harm and damage will occur to Defendant through the odium and obloquy of a temporary injunction being issued, than would occur to the Complainant by its denial.

Affiant states that there is a non-joinder of parties plaintiff in that the Bellingham Herald, the Post-Intelligencer and the Seattle Times, referred to in paragraph ten (10) of the Bill of Complaint, are necessary parties.

Affiant states that the complainant's damages do

not exceed the sum of three thousand ($3,000.00) dollars, or any sum of money whatsoever, and this suit was not brought in good faith on the part of complainant, for the complainant will not stand to lose any [50] amount of money by any of the things and acts alleged to have been committed by Defendant in said complainant's bill;

That this action was brought in this Court by the complainant in collusion with the Bellingham Herald, for the purpose of creating a case cognizable in Federal Court, and that the Bellingham Herald, being a necessary part Plaintiff, nevertheless, has been omitted, because its joinder would destroy complete diversity as to citizenship and the remedy, if any, for the plaintiff in interest the Bellingham Herald, rests in the Superior Court of the State of Washington, Whatcom County;

Affiant alleges on information and belief, that the Bellingham Herald and the Complainant, The Associated Press, have been appropriating news acquired exclusively by defendant and broadcasted over its Station, and, therefor, Complainants do not come into Court with clean hands;

Affiant states that the Complainant, The Associated Press, has no interest whatever in this suit. and the Bellingham Herald is endeavoring to secure a monopoly on all of the channels of news and publicity in Bellingham and Whatcom County in the State of Washington, to the detriment of the public, and in violation of the Constitution of the State of Washington.

That in order to show that Defendant secures its news independently and distinctly from sources pos

sible to be supplied by Complainant, affiant sets forth that his news program, subsequent to the issuance of the temporary restraining order herein, has been as interesting and as fresh as heretofore, of which complainant cannot make any complaint;

That no attempt has been made by Complainant to have Defendant and its officers cited for contempt, for the reason that they, and each of them, know that defendant KVOS secures its news from lawful and legitimate sources and piracy could not be proved [51] in good faith or by competent and admissable evidence; affiant states that defendant KVOS has always secured its news from independent and legitimate sources, and complainants are merely attempting to use the law and the powers of this Honorable Court sitting in equity as a sword instead of a shield, and for competitive and political purposes, rather than for any equitable or legitimate purposes, and this action will be subsequently shown on the hearing of the merits, to be steeped in bad faith and unfair competitive methods, and justice will be best served by denying a temporary injunction requested by complainants.

ROGAN JONES

Subscribed and sworn to before me this 27th day of November, 1934.

KENNETH C. DAVIS
Notary Public in and for the State of Washington, residing at Seattle.

Service accepted and copy received at Bellingham. Wn., Nov. 28, 1934.

HOWARD J. KINDALL
Attys for Complainant [52]

EXHIBIT A

WORLD - WIDE FLASH NEWS
NOW AVAILABLE AT RATES
WITHIN EVERYBODY'S REACH
Short Wave Telegraphy Solves
Hitherto Prohibitive Costs
of News Delivery via Wire

150 STATIONS NOW SUBSCRIBING

Big Rush to Secure Franchises
Underway; Spot Sponsorships
of Newscasts Impending

NEW YORK—A nation-wide system of wireless circuits for the delivery of FLASH NEWS to radio stations, was announced today by TRANS-RADIO PRESS SERVICE, INC., thru its subsidiary, RADIO NEWS ASSOCIATION, Inc.

Powerful short wave transmitters located on the Atlantic and Pacific Coasts, are now spraying the entire hemisphere with dots and dashes, which spell out the flash and bulletin news of what is going on in the world from hour to hour. Radio stations from coast to coast now subscribing to this unbeatable and sponsorable news service are copying the four daily transmissions with dependability and great satisfaction.

The development of radio telegraphic delivery of authenticated news of radio stations signalizes the elimination of the prohibitive telegraph toll costs which have prevented the majority of stations from buying fresh and sponsorable news. Now, however, every station no matter how small, how remotely

situated, can afford to buy the short wave service of the RADIO NEWS ASSOCIATION, at rates which assure them of large profits thru the sale of newscast sponsorships.

The speed of the short wave service can be gauged by the time it took for the flashing of the arrival of Captain Eddie Rickenbacker at Newark Airport Nov. 8th, completing a record-breaking transcontinental hop. The wheels of Rickenbacker's plane touched the ground at 8:47 p.m. RNA flashed at 8:51 p.m., and stations which fortunately were subscribers to this service, were able to broadcast the flash at 9 p.m. By the time morning newspapers had appeared with the story, everybody had gone to bed.

* * * * * *

Behind this announcement is a story of TRANS-RADIO'S long and expensive experimentation with multiple short wave frequency delivery which now opens up the vast stretches of the continent to inexpensive and sponsorable news, gathered exclusively for radio stations.

Behind that announcement is a message to radio station owners, for this fast and economical news service brings to large and small radio stations the same, superb news continuity, providing them with the finest radio program ever offered the public.

[53]

SCOPE OF COVERAGE: More than 7500 trained newsmen throughout the five continents gather and flash the news from the Pacific Coast eastward, from London and Paris westward across

the Atlantic to Transradio's editorial headquarters in New York, where it is edited and fed by private line to the Transmitters at Little Neck, Long Island. There it is pumped by dots and dashes on various frequencies designed to cover the entire American continent.

NEWS CONTINUITY: The flashes and bulletins are transmitted ready for the microphone, crisply written, expertly edited. Every dispatch is fully authenticated. Each broadcast is made up by radio news experts who make sure all the airworthy news of national and international developments is included in each transmission, fresh up to the moment of transmission. News is presented with absolute objectivity, without any partisanship or distortion. Stories average from 50 to 250 words each.

HOURS OF TRANSMISSION:

6:00 to 7:00 9:00 a.m. to 10:00 a.m., E.S.T.—WCX—7,850 kilocycles
9:30 to 10:30 12:30 p.m. to 1:30 p.m., E.S.T.—WCX—7,850 kilocycles
WPU–14,635 kilocycles
2:00 to 3:00 5:00 p.m. to 6:00 p.m., E.S.T.—WCX—7,850 kilocycles
5:30 to 6:00 8:30 p.m. to 9:00 p.m., E.S.T.—WCX—7,850 kilocycles

SPEED OF TRANSMISSION: An average of 22 to 25 words a minute, easily within the capacity of most short wave operators in Continental Morse.

NECESSARY EQUIPMENT: Hammerlund Comet "Pro", National 2AGX, or National SB1, equipped with pre-selector. Other commercial types of receivers are available. Retail cost range is from $200 to $100, subject to usual discounts.

TYPE OF ANTENNAE: Directed broadside to Little Neck, cut to proper wave length. Doublet

antenna with a transmission line should be used. No attempt should be made to use a single wire antenna. Antenna and transmission line should be kept away from possible sources of electrical interference such as electrical motors, etc. It is unwise to attempt reception in close proximity to broadcast transmitter. Receiver and receiving antenna should be located on spot with as high an elevation as possible without intervening obstructions such as steel buildings, water tanks, etc., in the direction from which the signal comes.

SHORT WAVE OPERATORS: Many stations already have competent short wave operators on their engineering staffs. If not, an advertisement in your local newspaper will probably bring you several applicants. Rates of pay vary in the east, west and south. Excellent operators can be obtained on a full-time basis for $30 to $35 a week. However, the task of copying the short wave service is primarily a part-time or half-time occupation.

NOTEWORTHY STATIONS already subscribing to the short wave news:

KNX HOLLYWOOD
WLS CHICAGO
WQAM Miami
KFPY SPOKANE
WCLO JANESVILLE, Wis.
WDAY FARGO, N. D.
KOY Phoenix, Ariz.
WSGN Birmingham, Ala.
KFEL DENVER, Col.
KFDN CASPER, Wyo.
WTOC SAVANNAH, Ga.
WMT WATERLOO, Iowa
KPAC PORT ARTHUR, Tex.
WHBL Sheboygan, Wis.
WBTM Danville, Va.

WHAT THEY THINK: [54]

S. H. Bliss, WCLO Janesville:

"We have been very proud of the fact that in the majority of cases we have been scoop-

ing even our own newspaper and have been publicizing the fact." (WCLO owned by Janesville Daily Gazette, member of Associated Press.)

D. L. Hathaway, owner KDFN, Casper: "Daily we are able to scoop other news agencies; on 80 per cent of their news we are about 5 hours ahead on the average."

C. G. Burke, commercial manager WDAY, Fargo: "Your news is terse, yet ample,—the best service now open to radio stations."

Guy Earl, Jr., owner KNX Hollywood: "The news by short wave is ideal for newscasting. We can pick up your transmitters without difficulty."

N. C. Ruddell, manager WJMS Ironwood, Michigan: "Our newscasts are getting a lot of attention. At any time you have a prospective station that may be skeptical about the dependability and regularity of the short wave method of receiving news, we will be glad to have you refer them to us."

S. A. Cisler, manager WSGN Birmingham: "Our news broadcasting is really taking hold in this town. I can't see how any station can afford to do without a news broadcast, even at the expense of *of* one less announcer!"

F. W. Borton, President WQAM Miami: "Want you to know we are getting a big kick

out of watching this 'Press Baby' grow and expect it to be a lusty giant in the near future."

RATES: For unsponsored newscasts, the rates are nominal, based on wattage and primary population figures. The rate structure is built so as to give stations the full use of this excellent news service *at cost,* with provision for higher rates when sponsorships are obtained. YOU ARE URGED TO ACT QUICKLY BECAUSE LOCAL FRANCHISES CANNOT BE GUARANTEED.

Wire or write for rates and frequencies

RADIO NEWS ASSOCIATION, Inc.
342 Madison Avenue
New York City

[Endorsed]: Filed Nov. 30, 1934 [55]

[Title of Court and Cause.]

AFFIDAVIT RESISTING APPLICATION FOR TEMPORARY INJUNCTION

State of Washington
County of King—ss.

L. H. DARWIN, being first duly sworn on his oath, deposes and says:

That he is and has been for more than forty-three years, a resident of Whatcom County, State of Washington, residing particularly in the City of Bellingham, of said County and State;

That for approximately twenty-seven years last

past, affiant has been interested in and has been affiliated with various newspapers and publication companies, as owner, manager, editor and reporter;

That during the past seventeen months affiant has been conducting the "Newspaper of the Air" on Radio Station KVOS in the City of Bellingham, which program is designed and conducted by affiant for the purpose of furnishing to the public, gratuitously and without charge, an interesting and informative news program of the most popular up-to-the-minute reports of news events of the nation and the world as they appear and happen by night and day, as well as the interesting and popular local news items which are supplied affiant by two local reporters under his supervision and control, and from other responsible and reliable sources;

That affiant conducts this "Newspaper of the Air" three or more times a day, and the greater portion of this news, except the local items secured by affiant, is secured from the Radio News Associa- [56] tion of New York, which is a news service supplied under contract to KVOS by this national news agency; affiant avers that this news is undistorted, fresh and interesting, and news events which happen in New York or on the Atlantic Seaboard at 6:00 p.m. on a day certain, arrives in Bellingham at the advanced hour of 3:00 p.m. of the same day, due, of course, to the difference between the Atlantic and Pacific Coast time, but this indicates and illustrates the importance, the desirability, and the revolutionary character of news reports by radio as compared with the old-fashioned and anti-

quated reports by wire used by Complainant Association; that the news events which affiant broadcasts, inevitably "scoops" and surpasses in time and freshness the news which is usually supplied by Complainant and its members; affiant states that just recently, radio news made a national "scoop" over the newspapers and Complainant on the recent maritime disaster of the "Moro Castle", as well as the assassination of King Alexander; the Franco-Russian Military Alliance; the capture and death of Dillinger; the capture of the Lindbergh kidnaper, together with the current events of the trial thereof in New Jersey; and various other national and international news events;

That affiant through only legitimate and lawful methods of securing news, both local and state-wide, has "scoops" on practically every daily broadcast which surpass the Bellingham Herald, the member of Complainant Association, and the real party Plaintiff in this action, as affiant verily alleges on information and belief, and this action has been prompted by competitive reasons rather than for any meritorious puruose;

That on numerous occasions, Complainant and the Bellingham Herald have acquired, pirated, and used various items of news which affiant has acquired, exclusively, and broadcast over the facilities of KVOS, and particularly affiant makes reference to an item of news which affiant states and believes that Complainant and its associate member, the Bellingham Herald, used to their advantage and profit, was an item of

news involving an ultimatum served by the State NRA Director [57] on the Whatcom County Dairymen's Association, which item of news was in the sole and exclusive possession of affiant, with the exception of the Dairymen's Association, and said item of news was broadcast over KVOS by affiant at the approximate hour of 9:25 a.m., Thursday, November 22nd, 1934, whereupon the Bellingham Herald appropriated, used, and pirated this news item as its own, from affiant's radio broadcast, and it was admitted in the body of their news story that they did not receive such news from the Dairymen's Association, and affiant, being a member of the State Advisory Counsel of the NRA, was the only other person in Bellingham who had such news in his possession, and the Complainant Associated Press or the Bellingham Herald could not have obtained this item except through piracy, for the reason that it was not publicly announced until affiant did so over the KVOS broadcast; that affiant it not attempting to establish a property right in this item of published news, for the reason that affiant believes that news once published or broadcast is public property, and Complainant and the Bellingham Herald are entirely welcome to the same, but affiant advises this Court of this incident for the purpose of showing that the Complainant and its member newspaper, the Bellingham Herald are petitioning this Court for relief when their own hands are unclean;

Affiant sets forth on his information and belief, and he verily believes the same to be true, that more than fifty per cent of the local news published by

the Bellingham Herald each day, has been pirated and appropriated from affiant's radio broadcast, which news according to Complainant's contention becomes the property of the Associated Press, and therefore, by their own admission, freely appropriated by them;

That this piracy and appropriation of the news from affiant's broadcast over Defendant KVOS, has existed for a number of months, although affiant and Defendant KVOS claim no property interest in and to said news, once it is made public, on the ground that the same has [58] been dedicated to the public at large, and affiant states that such is his belief as to the news stories of Complainant once they have been sold to the public by Complainant, although affiant denies he has ever used any of Complainant's news at any time;

Affiant states further that at no time within the knowledge of Affiant has the Defendant Radio Station KVOS appropriated, pirated or used any news items belonging to Complainant, or the Bellingham Herald, or any other of its member papers;

Affiant recognizes that at times the stories of Complainant and its members may be similar in form to the stories broadcast by affiant, but these instances, affiant states, result from the usual newspaperman's treatment of a coomon subject which contains the same elements of thought or sentiment, and two or more newspaper men may write two stories which are identical in form and design, but,

yet, notwithstanding such likeness and similarity, each one of these stories may be in all probability entirely original;

Affiant does not use the news of Complainant, or of its member newspapers, but on the contrary, affiant gathers news from the usual sources that any newspaperman of affiant's experience would gather such news. Affiant sometimes receives newspapers from Canada, Mexico, Oregon, Idaho, and various parts of the State of Washington, which are sent to affiant with the express request that he broadcast as much thereof as he wishes, although affiant has refrained from broadcasting any news which originated with, or has been marked as originating with Complainant;

Affiant states that more news is volunteered to the average local radio news program for broadcasting, than is volunteered to the average newspaper which uses these news [59] items for profit. Affiant makes these statements for the reason that he is qualified to do so; For many years affiant was the Correspondent and Manager of Circulation of the Seattle Times in Bellingham; that affiant was a political reporter for the Seattle Times for the State of Washington and covered many State Conventions for all political parties, as well as many sessions of the legislature, for that paper; for many years affiant was the Manager of the American Reveille, a newspaper owned by the Seattle Times in Bellingham; affiant was formerly Fish

Commissioner and Game Warden for the State of Washington, and within recent months affiant was a member of the State Recovery Board of the NRA, and at the present time is a member of the State Advisory Counsel of the NRA; affiant was also, for six years, Clerk of the Bellingham Normal School. Affiant sets forth this information in order to show the vast informative sources for securing those local and state news items which he broadcasts each day over KVOS free and independent of the facilities of Complainant, and he has no need for the service of Complainant or its member newpapers, for the very simple reason that affiant and KVOS obtain all the news they need, or can possibly use, from legitimate and unquestionably responsible sources;

That the "Newspaper of the Air" conducted by affiant over Defendant KVOS, serves a greater business, social and public interest in and around the City of Bellingham and vicinity, than does Complainant and its member newspaper, and reaches a greater audience than any newspaper could do so, in that the people on farms in the Counties of Whatcom, Skagit, San Juan, Snohomish and Island depend almost exclusively upon this informative news service for information on news and political events, and many of them are unable to subscribe to and pay for a newspaper containing news which is a day old [60] from the time of affiant's radio broadcast; although affiant recognizes that a newspaper serves a useful purpose, yet, so does the radio,

and many blind people and shut-ins, who have no chance or opportunity to read a newspaper, depend entirely upon affiant's "Newspaper of the Air" program, which news as aforesaid, can reach them many hours before said news is even printed in the newspapers referred to in Complainant's Bill of Complaint;

That affiant has been on numerous occasions libellously attacked by the Bellingham Herald, a member of Complainant Association, for no reason other than that of professional jealousy;

That affiant is willing to cooperate with the Bellingham Herald and the Complainant, but affiant alleges and verily believes that this suit is merely the aftermath of the political and competitive warfare declared on Defendant KVOS by the Bellingham Herald, and any alleged pirating or appropriation of news from the Complainant is not only impossible, but ridiculous, for the reason that Defendant is supplied hourly with a fresher, better, and more interesting supply of news for Defendant's purpose, from legitimate and lawful news sources before Complainant or its member newspapers can even print the same.

L. H. DARWIN

Subscribed and sworn to before me this 28th day of November, 1934.

[Seal] KENNETH C. DAVIS

Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed Dec 3, 1934 [61]

[Title of Court and Cause.]

REBUTTAL AFFIDAVIT OF HAROLD TURNBLAD

State of Washington,
County of Whatcom—ss

HAROLD TURNBLAD on oath says: That he is Chief of the Associated Press Bureau maintained by complainant above named at Seattle, Washington, and as such Chief of such Bureau is in charge and supervision of the news service of complainant in the State of Washington.

That affiant has read the motion of defendant's attorneys to dismiss bill of complaint, as well as affidavit of Rogan Jones resisting application for temporary injunction herein, as well as affidavit of L. H. Darwin in the same connection; that as to the question of non-joinder raised in defendant's said motion to dismiss, affiant shows that the absolute ownership of the news which is being appropriated by defendant is in the complainant above named and that none of the newspapers to which it sells said news has any right in itself to sell the same or to permit the defendant to appropriate or use the same, even with said newspapers' consent as against the objections of complainant; furthermore, in the territory served by the radio station operated by defendant there are numerous newspapers other than those heretofore mentioned taking complainant's news service and it is for the general protection of com-

plainant's service to all of said newspapers and also for the purpose of maintaining its own organization and entity that this [62] action is brought and there is no fraudulent nonjoinder or failure to make other persons parties to this action whatsoever; that The Bellingham Herald is the only paying member of complainant in the City of Bellingham and that complainant used the services of the staff of said The Bellingham Herald in acquiring the evidence which is set forth as a showing herein, *soley* because the members of such staff were experienced, able and competent in that respect.

That as to the objection that the amount in controversy does not exceed the sum of Three Thousand Dollars, exclusive of interest, affiant shows to the Court that the annual expense to complainant *of gathering news for sale to its members*, including the newspapers in the district served by this Bureau, and also in the District served by the radio station operated by defendant, is several million dollars, and that the payments made by newspapers for said news sold to them by complainant in the territory served by said radio station is upwards of $8000.00 per month, which is being imperiled and jeopardized by the acts of defendant as set out in the records and files herein by its unlawful and wrongful appropriation of complainant's news, and said sum greatly exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, and complainant is in danger of losing said memberships and payments if defendant's practices in respect to pirating said news is not enjoined.

That the sole concern of complainant is defendant's use of news furnished by complainant to member newspapers or news to which complainant is entitled under its reciprocal arrangements with member newspapers described in the bill of complaint herein and that complainant is not concerned and seeks no remedy as to any news that may be gathered by defendant through its own efforts or [63] which may be otherwise acquired by defendant, and the question of defendant's acquiring news through sources other than complainant is not an issue in this proceeding.

That as to complainant or any of its member newspapers endeavoring to establish a monopoly in news, affiant states that there is no such thing as a monopoly of news; that every organization has the right to gather news by its own expenditure of time, effort and money and that there are at least three news services, international and national in aspect, which sell news to other newspapers and other agencies in the territory served by the radio station operated by defendant, and that there are news services which sell news to radio stations for broadcasting, any one of which is available to defendant upon terms to be mutually agreed upon between defendant and any of such news services, but that this does not concern the issue here presented, and as to news which may be gathered by defendant and broadcast by defendant over its said radio station other than the news so owned by complainant, this complainant makes no

complaint, its sole application for remedy herein being only to restrain defendant from appropriating the news so gathered by and/or owned by complainant; that on page "3" of said affidavit of Rogan Jones is mentioned the news of the Longshoremen's strike in Seattle, San Francisco and the Pacific Coast Cities last summer as having been received from sources other than complainant's service. As refuting defendant's claim to such effect, affiant refers to the news broadcast set out in respect to said strike as appears in the affidavit of Messrs. Reeves, Sefrit, et al, sworn to November 10, 1934, and also to their rebuttal affidavit setting out the specific newspaper articles, and invites a comparison thereof which will establish complainant's claim that such broadcasts were manifest piracy of [64] complainant's news.

As to defendant's statement that its station does not make any charge to the public for its broadcasts, affiant states that said defendant has filed with the proper authorities at Washington, D. C. its schedule of rates for advertising when such advertising is inserted in the course of its news broadcasts, as well as rates for advertising when not given during the course of such broadcasts, and it appears therefrom that the charges to such advertisers during the time that such news broadcasts are given is greater than at other times when such advertising is given over said radio station, thus showing that defendant capitalizes the interest which it attempts to create by broadcasting news

and inserting during the course thereof such advertising.

As to defendant's suggestion that independent authors on a common subject may contain the same thought, sentiments and ideas, affiant simply calls attention to the exact duplication of language and words in the broadcasts of defendant in instances where it pirated and appropriated the news articles of complainant from the newspapers referred to and as set out in the affidavits made a part of this record.

That complainant brings this action in good faith for its own protection in preserving the value of its news so gathered by it for its members; otherwise to permit defendant or other persons or institutions so minded to appropriate any of complainant's news while the same is fresh and constitutes news of salable value would be to abolish the value of complainant's news and render impossible the sale thereof and would in its final analysis result in the virtual destruction of complainant as a news gathering agency, and that complainant in good faith many times prior to the institution of this action caused interviews to be had in its behalf with [65] various members, officers and employees of defendant, including said Rogan Jones, explaining complainant's position and rights and endeavoring to obtain defendant's cooperation, but defendant has persisted in its piracy of complainant's news and this action is only brought as a last resort in good faith and in protection of complain-

ant's rights as set forth and claimed in the records and files herein:

HAROLD TURNBLAD

Subscribed and sworn to before me this the 1st day of December, 1934.

[Seal] J. W. KINDALL

Notary Public in and for the State of Washington, residing at Bellingham. [66]

[Title of Court and Cause.]

REBUTTAL AFFIDAVIT OF CHARLES L. SEFRIT AND BEN H. SEFRIT.

State of Washington,
County of Whatcom,—ss.

CHARLES L. SEFRIT and BEN H. SEFRIT on oath each for himself and not one for the other, says:

That on November 14, 1934 in Bellingham, Washington, affiant listened to a socalled broadcast over Radio Station KVOS in Bellingham, Washington, operated by defendant over the usual wave length of said station; that each of said affiants are familiar with the voices of the ones who broadcast at that time and recognized the voice of one L. H. Darwin as making such broadcast; that during the course of such broadcast on said date at approximately 7 P. M. said Darwin broadcast over said radio station, verbatim, portions of two separate news items from The Seattle Daily Times, Edition

No. 6 of November 14, 1934; that said news articles as they appeared in said newspaper are hereinafter set out and the portions of the bodies of said articles so hereinafter set out which are capitalized are the respective portions thereof which were so broadcast by the said L. H. Darwin: [67]

THE SEATTLE DAILY TIMES — #6, November 14, 1934 — Page 3, Col. 6.

C.L.S.
B.H.S.

SEVERYNS WINS
SHERIFF RACE
BY 531 VOTES

WILLIAM B. SEVERYNS WAS ELECTED KING COUNTY'S SHERIFF FOR THE NEXT FOUR-YEAR TERM, GIVING DEMOCRATS A CLEAN SWEEP OF ALL COUNTY OFFICES, THE KING COUNTY ELECTION BOARD ANNOUNCED LAST EVENING ON COMPLETING ITS CHECK OF VOTES, INCLUDING 1,371 ABSENTEE BALLOTS.

SEVERYNS WON OVER WILLIAM H. SEARS, REPUBLICAN NOMINEE FOR THE OFFICE, BY THE NARROW *margin* of 531 VOTES OUT OF THE 136,471 BALLOTS CAST IN THE RACE.

The total vote in the sheriff's race; after the absentee votes were added in, was: Severyns, 68,501; Sears, 67,970.

It was the closest King County race in the mem-

ory of County Auditor George A. Grant and other election officials.

Sears received a majority of the absentee votes, 738 to Severyns' 633, but this was not enough to overcome the 636 lead which Severyns received in the votes counted last week.

(The exact transcript of the above item as broadcast over KVOS Wednesday, November 14, 1934 at 7 o'clock P. M. follows:)

SEATTLE: William B. Severyns was elected King County's sheriff for the next four-year term, giving the Democrats a clean sweep of all county offices, the King County Election Board announced on completing its check of votes, including 1,371 absentee ballots.

Severyns won over William H. Sears, Republican nominee for the office, by the narrow majority of 531 votes out of the 136,471 ballots cast in the race.

THE SEATTLE DAILY TIMES — #6, November 14, 1934 — Page 26, Col. 6

(Part 2.) C.L.S.
B.H.S.

MORE DAIRIES
FACE CHARGES
IN CODE FIGHT

WHILE ONE SMALL DAIRY SOUGHT RELIEF IN THE COURTS YESTERDAY FROM "CRACK-DOWN" TACTICS OF THE STATE DEPARTMENT OF AGRICULTURE, DIRECTOR OF AGRICULTURE WALTER J. ROBIN-

SON MOVED AGAINST FOUR OTHER DAIRIES AND THE CUDAHY PACKING COMPANY OF SEATTLE, CITING THEM FOR SELLING MILK AND BUTTER BELOW MARKETING AGREEMENT PRICES.

The Cudahy company must show cause at a hearing set for November 26 at Olympia, why its Agricultural Adjustment Act license should not be revoked for selling butter at 2 cents a pound below prices fixed by the state butter code.

The Gold Medal and Qualitee Dairies in Seattle, Noble & McClurg, Bellingham, and the Evergreen Dairy, Olympia, also were cited for price-cutting, Associated Press dispatches reported.

The Olympia and Bellingham dairies had hearings at Olympia yesterday. Hearing for the Gold Medal Dairy was set for Seattle today, and for the Qualitee Dairy in Olympia November 20.

Their license revoked and their stall in the Pike Place Market forbidden to handle dairy products, Mr. and Mrs. John Bachman prepared to carry their dispute with the Agriculture Department to the courts. Attorney Clarence W. Pierce was retained by the [68] Bachmans and intended to confer with Director Robinson.

"This case has gone beyond the question of code prices," Attorney Pierce commented. "These people are now prevented from doing business. Unless their license is restored their creditors will foreclose and the Bachmans will lose their farm and herd. It will be just another case for the breadline."

If Robinson does not order the license restored, the case will be taken to the courts and the constitutionality of the code prices will be attacked, Pierce said.

The Bachmans, who own a herd of Jerseys and Guernseys near Renton, protested that the efforts of eighteen years of farming will be wiped out if their business is closed. They had been selling whipping cream at 25 cents a pint, 4 cents under the price fixed by the state.

The state enforced price was raised today to 32 cents, but Bachman said 20 cents would be a fair price and still allow him a good margin of profit.

W. V. Robb, manager of the Seattle milk industry board and state code administrator, said the Bachmans had been given a fair hearing and were warned several weeks ago that they had to boost the price of cream. The Bachmans say they must sell at lower prices in the market to compete with dairies and stores which deliver.

(The exact transcript of the above item as broadcast over KVOS Wednesday, November 14, 1934 at 7 o'clock P. M. follows:)

SEATTLE: While one small dairy sought relief in the courts yesterday from "crack-down" tactics of the State Department of Agriculture, Director of Agriculture, Walter J. Robinson moved against four other daires and the Cudahy Packing Company of Seattle citing them for selling milk and butter below marketing agreement prices.

And we told you about that on our broadcast last night.

* * *

[69]

that by each of the aforesaid broadcasts the defendant and the said L. H. Darwin are guilty of contempt of the temporary restraining order theretofore issued from the above entitled Court and served upon said defendant and the said L. H. Darwin, and emphasizes the necessity of a preliminary injunction to be issued herein.

CHARLES L. SEFRIT

BEN H. SEFRIT

Subscribed and sworn to before me this the 30th day of November, 1934.

[Seal] J. W. KINDALL

Notary Public in and for the State of Washington, residing at Bellingham.

[Endorsed]: Filed Dec 3, 1934. [70]

[Title of Court and Cause.]

COMPLAINANT'S REBUTTAL AFFIDAVIT

State of Washington,
County of Whatcom,—ss.

HALLOCK E. REEVES, CHARLES L. SEFRIT, BEN H. SEFRIT, and W. C. CARVER each being duly sworn, on oath each for himself and not one for the other, deposes and says:

That affiants are the same affiants who made affi-

davit in the above entitled cause under date of November 10, 1934 before J. W. Kindall as Notary Public, and each of said affiants has read that portion of the affidavit of Rogan Jones herein, dated November 27, 1934, in which the said Rogan Jones denied on information and belief that the said radio station KVOS had broadcast any news belonging to complainant; that each of said affiants refer to their said affidavit of November 10, 1934 heretofore filed herein, and to the portions of said affidavit setting out the broadcasts from said radio station KVOS, to which these respective affiants listened, and refer also to the initials "C.L.S", "H.E.R." or "H.R.", "B.H.S." and "W.C.C." appearing at the head of each of said broadcasts so set out in such affidavit of November 10; that each of the following articles herein set out are copies of the original newspaper articles from which said respective broadcasts were read, taken and/or rewritten, as the [71] case might be, and that the portion of the following articles set out in capital letters is the exact language as it was used by the broadcaster on said radio station KVOS at the respective times indicated, and such portion of the article as is not in capital letters was not broadcast over said radio station, and the head lines were not usually broadcast by said radio station; at the head of each of the following articles is indicated also what newspaper the same appeared in, to-wit, whether The Seattle Daily Times, Seattle Post Intelligencer, or The Bellingham Herald, and also the date, page and

column and edition of such paper in which said article appears from which said radio station pirated said news, the following being exact copies of the articles as they appeared in said newspapers: [72]

THE SEATTLE DAILY TIMES, #6, April 12, 1934 — P.1, Col.3. C.L.S.

LAKE MAY YIELD
WEAPON USED IN
KITSAP MURDERS

King County Deputies Will Drag Waters
Near City on 'Tip'; Solution
May Come From Prisoners

WITH THE DISCLOSURE THAT A LAKE IN THE VICINITY OF SEATTLE WILL BE DRAGGED TODAY IN A SEARCH FOR A FIREARM THAT MAY HAVE BEEN USED IN THE MASS MURDER AT FRANK FLIEDER'S HOME NEAR BREMERTON, SHERIFF CLAUDE G. BANNICK ANNOUNCED A POSSIBLE SOLUTION OF THE ERLAND'S POINT MYSTERY MAY COME THROUGH EIGHT PERSONS HELD SINCE YESTERDAY IN THE KING COUNTY JAIL.

THE EIGHT PERSONS—FIVE MEN AND THREE WOMEN—WERE BEING HELD THIS MORNING FOR INVESTIGATION IN CONNECTION WITH NUMEROUS RECENT ROBBERIES IN SEATTLE AND ENVIRONS.

DEPUTY SHERIFF WILLIAM H. SEARS, WHO WITH DEPUTY SHERIFF R. A. J. AL-

LINGHAM ARRESTED THE EIGHT, SAID THAT ONE OF THEM HAD ASSERTED THAT ONE OF THE WEAPONS USED IN THE BREMERTON MURDER HAD BEEN THROWN IN A LAKE NEAR SEATTLE.

SEARS SAID HE WOULD BE BUSY THIS MORNING FILING COMPLAINTS AGAINST SEVEN OF THE PERSONS ARRESTED IN CONNECTION WITH VARIOUS ROBBERIES AND THAT AS SOON AS THAT WAS DONE HE WOULD FOLLOW UP THE LAKE CLUE.

SEARS SAID HE WAS NOT PREPARED TO ANNOUNCE WHAT LAKE IT WAS, NOR HOW THE PERSON HE QUESTIONED CAME TO KNOW THAT SUCH A WEAPON HAD BEEN THROWN THERE.

Sears said he was preparing to file complaints against Roy DuClaw, John (Spud) Murphy and his wife, Geraldine; Porter Pettijohn, Mrs. Beatrice O'Malley, Einar Mortensen and George Shepherd.

The eighth person will be held on an open charge.

THE BELLINGHAM HERALD, April 13, 1934 —P.1, Col.4. C.L.S.

UPSWING CONTINUES

Business Volume Last Saturday Highest in Three Years

NEW YORK, April 13,—(AP)—"Reports from

every part of the country this week brought uniform proofs of a further definite upswing in business industry," said the Dun & Bradstreet weekly trade review today.

The review commented that "while full credit is accorded the emergency legislation enacted last year for the wholesome betterment provided by the strong foundation laid for business recovery as well as for the strengthening of the nation's banking structure considerable stress is now being placed on the need for allowing the forward movement to proceed unhampered by new and unnecessary restrictions."

Regarding the movement of retail trade, the review asserted that "Almost without exception, the leading retailers of the country find that the tapering off in business, which usually is apparent after Easter, has not developed, as VOLUME LAST SATURDAY IN SOME CENTERS WAS THE HEAVIEST FOR ANY SINGLE DAY IN THREE YEARS, with THE GAIN REACHING 40 to 50 PER CENT OVER THE COMPARABLE PERIOD LAST YEAR, WHEN EASTER BUYING WAS AT ITS PEAK.

"In the industrial divisions operating schedules are rising at a more rapid rate than they did in March, unaffected to any major degree by the labor difficulties still unsettled in some districts.

"The leading wholesale markets became unexpectedly active this week, as many buyers were forced to replenish spring goods which had been ordered too sparingly." [73]

THE SEATTLE DAILY TIMES, #6, April 18, 1934—Page 9, Col. 5. C.L.S.

STOLEN WATCHES OFFER NEW CLUES IN MASS MURDER

SEARCH FOR THE ERLAND'S POINT MASS MURDERERS TURNED TO SEATTLE TODAY.

SHERIFF D. L. BLANKENSHIP OF KITSAP COUNTY WAS REPORTED ON HIS WAY HERE THIS MORNING TO CONFER WITH KING COUNTY DETECTIVES R. A. J. ALLINGHAM AND WILLIAM H. SEARS ON NEW CLUES WHICH INDICATE THE SLAYERS MAY HAVE BEEN SEATTLE UNDERWORLD CHARACTERS.

BLANKENSHIP'S VISIT TO SEATTLE WAS BELIEVED TO BE THE RESULT OF A DISCOVERY THAT THE SLAYERS STOLE THREE WATCHES FROM MR. AND MRS. FRANK FLIEDER, TWO OF THE SIX MURDER VICTIMS. THIS WAS LOOKED UPON AS ONE OF THE MOST IMPORTANT CLUES OF THE INVESTIGATION, AS THE WATCHES CARRY NUMBERS.

KITSAP COUNTY OFFICIALS MAILED OUT 500 CIRCULARS DESCRIBING THE WATCHES TO PACIFIC COAST POLICE AND SHERIFF'S OFFICES, WITH REQUESTS THAT PAWNSHOPS BE WATCHED FOR THE MISSING TIMEPIECES.

The description of the missing watches, as reported to Detective Capt. Ernest W. Yoris, follows:

Seventeen-jewel Illinois red gold strap wrist watch; movement No. T5449759; case No. 8461244; repair No. 32493.

Fifteen jewel Gruen woman's wrist watch; movement No. 1519953; case No. 1198354; repair No. 32739.

Fourteen jewel Eaton watch, size 12, gold filled; movement No. 79391; repair Nos. 19511 and 11413; initial "F" scratched inside case.

THE BELLINGHAM HERALD, April 18, 1934 —P. 1, Col. 6. C.L.S

FOUR KILLED WHEN AIRPLANE CRASHES IN TEXAS

Two Men, Two Women Out on "Local Spin" Run Into Storm — Bodies Charred

LEWISVILLE, Tex., April 18.—(AP)—Four charred bodies, those of *two men and two women,* today were freed from the twisted wreckage of cabin plane that carried its occupants to death in a forced landing nine miles northwest of here late last night.

Two farmers who witnessed the tragedy, aided by neighbors, lifted the bodies of the occupants from the cooling steel of the demolished plane. The

bodies were placed in the soggy mud beside the plane to await arrival of a truck—the only possible means of traversing the country lane between the scene of the crash and Lewisville a distance of nine miles.

The dead are:

Harry Fowler, 36, Dallas, pilot

Jack Poole, 40, Dallas

Lillian Rose, 18, Dallas

An unidentified woman.

The fourth victim was tentatively identified as Mrs. Jewel Morgan, divorcee.

It was reported Mrs. Morgan had been to the Arlington Downs races yesterday with Poole, whom she had known for some time, and that she had failed to return to her Dallas home last night. She has not been located.

AIR PORT OFFICIALS SAID THE PARTY OF FOUR LEFT LOVE FIELD, DALLAS, SHORTLY AFTER 10 P.M. FOR A "LOCAL SPIN." Fowler WAS A WORLD WAR PILOT.

Several minutes later the plane tore through murky weather near Lewisville. Two farmers noticed the plane apparently had run into trouble and followed its actions.

One farmer, whose name was not learned, described the crash:

"I never saw a plane flying so fast. It come in from the southwest, circling [74] and circling. Each time it seemed to get lower to the ground. It

looked as if the pilot had apparently lost control of the ship. Suddenly it struck the ground with terrific force and bounced about fifty feet.

"Flames shot out from the ship—reaching at least 100 feet into the air. The flames roared for fully a half hour before they died out."

Farmers stood by helpless while the ship burned.

First reports the plane was struck by lightning were later discredited. However, the plane was flying through a terrific electrical storm, at the time of the forced landing.

Witnesses said the plane did not burst into flames until it struck the ground. A loud explosion followed and bits of the plane were hurled hundreds of feet.

The plane, a Bellanca six-passenger cabin ship, was privately owned.

THE SEATTLE DAILY TIMES, #6, April 30, 1934 — P. 1, Col. 7. H.E.R.

EMPLOYMENT UP 25 PCT. IN CITY, ASSERTS LUNDIN

Seattle today was closing the first third OF 1934 WITH BUSINESS INDUSTRY AND COMMERCE DECIDEDLY ON THE UPTREND, AND WITH PROSPECTS BRIGHT FOR THE FUTURE, ESPECIALLY FOR INCREASED EMPLOYMENT, ACCORDING TO A SUM-

MARY by Alfred H. Lundin, president OF THE SEATTLE CHAMBER OF COMMERCE.

"As one takes stock at this point he need not rely solely on hopes for the future as a basis for optimism," said Mr. Lundin. "Instead he can have the satisfaction of pointing to substantial gains in many lines in past months and especially in the weeks just behind us.

"CAR LOADINGS ARE MOUNTING STEADILY at SEATTLE IN VIRTUALLY ALL COMMODITIES. OUR FOREIGN AND DOMESTIC TRADE IS INCREASING. PARTICULARLY is there a HEAVY MOVEMENT TO ALASKA. INDUSTRIAL EMPLOYMENT IN SEATTLE HAS CLIMBED FULLY 25 PER CENT IN RECENT MONTHS.

"EMPLOYMENT IN RETAIL TRADE HAS INCREASED APPROXIMATELY 10 PER CENT. RETAIL SALES HAVE SHOT UP IN GRATIFYING MANNER. THERE IS A HEALTHY VOLUME OF BANK TRANSACTIONS. SEATTLE TELEPHONE INSTALLATIONS HAVE SHOWN A SUBSTANTIAL NET GAIN EACH MONTH THIS YEAR, IN PRONOUNCED CONTRAST WITH A YEAR AGO.

"Employment and payrolls in lumbering, the state's major industry, have made good gains, and if the administration proposal for federal loans to finance private building is carried into effect, we undoubtedly shall see activity soar in lumbering and allied industries and in the building trades.

THE SEATTLE DAILY TIMES, #6, May 1, 1934 — P. 4, Col. 1. H.E.R.

BANNICK WANTS 2 NEGROES HELD AWHILE LONGER

Although their accuser, Manford Morris, Seattle Negro, recanted yesterday when the authorities refused to pay him any money, two Negroes arrested in Los Angeles as suspects in THE ERLAND'S POINT (KITSAP COUNTY) MASS MURDERS STILL WERE HELD TODAY.

RAY R. GREENWOOD, KITSAP SPECIAL PROSECUTOR, ANNOUNCED LATE YESTERDAY, AFTER QUESTIONING MORRIS, THAT HE WOULD ORDER THE NEGROES RELEASED. SHERIFF CLAUDE G. BANNICK OF KING COUNTY, HOWEVER, INDUCED GREENWOOD TO HOLD OFF FORMAL NOTIFICATION OF RELEASE UNTIL SHERIFF D. L. BLANKENSHIP OF KITSAP COUNTY AND DEPUTY FLOYD BROWER OF KING COUNTY COULD REACH LOS ANGELES AND QUESTION THE NEGROES. THEY WERE SCHEDULED TO ARRIVE TODAY.

The Negroes in custody in Los Angeles are Alex Lucas, 30 years old, and William P. Evans, 29. They welcomed a chance to return here and prove their innocence, expressing relief when told of what they were accused.

Morris' repudiation was given Chief Deputy Prosecutor Emmel G. Lenihan, Sheriff Bannick and a court reporter.

Morris said he made the repudiation because two white men threatened Sunday [75] to kill him unless he did so. Morris added that two other white men had visited him last week and threatened to take him for a ride unless he accused the Negroes of the slayings. Greenwood, after questioning Morris, took no stock in the original accusations.

Sheriff Bannick said Morris was angry yesterday because the Kitsap County authorities had paid him no money for his original "solution" of the crime. Bannick said he gave Morris several dollars as "expenses."

Local deputies said Morris had tried, fruitlessly, to get money out of them last week, for his story.

As Morris became more and more hysterical, he was taken to the county jail "for his own safety," after he had begged protection. He was released last night.

THE SEATTLE DAILY TIMES, #6, May 1, 1934 — P. 1, Col. 5. H.E.R.

CITY COUNCIL APPROVES NEW RULES FOR TRAFFIC

Changes Will Raise Speed Limit to 35 Miles an Hour on Six Arterials; Parking Violations Hit

Legislative action on Seattle's new traffic code WHICH PROHIBITS PARKING IN CENTRAL BUSINESS DISTRICT STREETS DUR-

ING MORNING AND EVENING RUSH HOURS, RAISES THE SPEED LIMIT TO THIRTY-FIVE MILES AN HOUR IN SIX ARTERIAL HIGHWAYS, AND ESTABLISHES A TRAFFIC COURT, INTENDED TO ELIMINATE TAG "FIXING," WAS COMPLETED YESTERDAY BY THE CITY COUNCIL.

THE ORDINANCE WILL BECOME EFFECTIVE THIRTY DAYS AFTER IT IS SIGNED BY MAYOR JOHN F. DORE. HE IS EXPECTED TO SIGN IT IN A FEW DAYS. The intervening time will be employed in acquainting motorists with the provisions in the traffic act, in posting scores of sign boards and in setting up the machinery for the administration of the new regulations. The vote on the ordinance was unanimous. Copies of the ordinance will be available in pamphlets at the City Hall at a small charge.

The traffic code is the result of several years' study and investigation. One of the most troublesome problems has been the parking in the busy thoroughfares in the business district. Motorists who arrive early in many cases, spend the day in playing hide and seek with the traffic officers by shifting their cars from one place to another. The code prohibits parking between the hours of 7 to 9:30 o'clock in the morning and between 5 and 6 o'clock in the afternoon in First to Fifth Avenues from Jackson to Virginia streets.

The prohibited area also extends in Pike and Pine Streets to their intersection with East Madi-

son Street, in Olive Way from Third Avenue to Broadway, and in Stewart and Union Streets from First to Eighth Avenues.

The increase in the speed limit on six of the more important arterial highways was designed to expediate traffic once it has cleared the congested sections. The thirty-five-mile maximum will apply to the following thoroughfares:

Aurora Avenue from its south end to West Green Lake Way; Empire Way from Rainier Avenue to the south city limits; Fourth Avenue South from Airport Way to East Marginal Way; East Marginal Way from West Spokane Street to the south city limits; Spokane street and West Spokane Street from Airport Way to 30th Avenue Southwest and Westlake Avenue North from Denny Way to Fourth Avenue North.

One of the changes long sought by the Seattle Safety Traffic Council and by other agencies interested in the movement to enforce prudent regulations is the creation of a traffic bureau which will have jurisdiction over minor violations. The police judge is authorized to appoint a representative to handle minor infractions of the code and to fix a regular schedule of fines for first, second and third offenses. For serious offenses the code provides for booking violators at the police station instead of being summoned to the traffic court with the usual slips. [76]

Provision is made in the code for the elimination of "tag fixing" so far as possible. The slips will be serially numbered and issued in triplicate, the

motorist, the chief of police and traffic violations bureau each getting original or a copy. Each month the chief must report to the mayor, City Council and comptroller disposition of each slip. These reports will be open to public scrutiny.

One of the minor changes made yesterday repealed the ordinance prohibiting children from playing in the streets. The legal restriction will apply only to arterial highways. It was explained that notwithstanding the ordinance children will play in the streets and that the responsibility for protecting them must rest primarily on the motorists.

The ordinance also authorizes police to impound vehicles parked or standing on streets in violation of regulations. Owners must pay $2.50 towing charges and 25 cents a day storage to get their machines. The garages will be bonded.

Residents within twenty-five miles of Seattle, who intend to drive automobiles in the city, are required to register with police. Only city residents registered under the old code.

Another provision of the code makes traffic accident reports open to inspection by the coroner and city officers. It is intended to discourage "ambulance chasing" by attorneys who watch accident reports and then contact the principals and offer to represent them in resulting law suits.

Persons who get tags must report to police within twenty-four hours. If they don't they are adjudged guilty of violating the code and liable to $300 fine or ninety days in jail, or both. Within twenty-

four hours of getting a tag a motorist can report to the bureau and pay the stipulated fine. Motorists who have been guilty of three violations in a year must post bail for double the stipulated fine and appear in Police Court for trial if they want to attempt to get back some of the bail.

THE SEATTLE DAILY TIMES, #6, May 2, 1934 — P. 1, Col. H.E.R.

TWO FEDERAL OFFICIALS ON SECRET JOB IN SEATTLE

Assistant Attorney from Tennessee and Supervising Agent Believed to Be Investigating Rum Charges

A federal grand jury, which it is believed will delve into REPUTED IRREGULARITIES IN THE CUSTOMS DEPARTMENT IN THIS DISTRICT UNDER A PREVIOUS ADMINISTRATION, WAS CONVENED TODAY AS THE FIRST OFFICIAL DUTY OF J. CHARLES DENNIS, WHO WAS INDUCTED INTO OFFICE YESTERDAY AS UNITED STATES ATTORNEY.

Dennis will be assisted by Hamlet P. Dodd, assistant United States attorney.

THE *presence* OF C. E. WHITAKER, ASSISTANT UNITED STATES ATTORNEY FROM CHATTANOOGA, TENN., WHO HAS BEEN HERE SINCE APRIL 16, AND OF JOSEPH L.

GREEN, SUPERVISING CUSTOMS AGENT IN CHARGE OF INVESTIGATIONS SINCE LAST FALL, HAS BEEN REMARKED.

GREEN IS KNOWN TO HAVE directed the INVESTIGATIONS WHICH RESULTED IN SUSPENSION OF SEVEN CUSTOMS MEN LAST NOVEMBER.

The nature of Whitaker's mission here has been kept secret, but he is known to have been interviewing customs officials and colleagues of the United States attorney's office here, and it is believed he will assist in presenting the customs cases to the grand jury.

The reputed irregularities to be investigated are reported to be the diversion of seized liquors to illicit use; disappearanee of all the expensive liquors from the customs' storage; repairing in the customs garage of a private automobile, and drinking parties attended by customs men and friends aboard craft in Elliott Bay. [77]

THE SEATTLE DAILY TIMES, May 2, 1934, #6 — Page 2, Col. 5. H.E.R.

CHLOROFORM THUG FOILED BY WAITRESS

A THUG SEIZED A YOUNG WOMAN IN SUMMIT AVENUE NORTH LAST NIGHT AND TRIED TO HOLD A CHLOROFORM SOAKED HANDKERCHIEF OVER HER FACE, BUT WAS THWARTED WHEN SHE WRENCHED FREE AND OUTRAN HIM.

THE YOUNG WOMAN, MISS LILLIAN

KLAUSE, 21 YEAR OLD WAITRESS, 320 SUMMIT AVENUE NORTH, WAS NOT INJURED.

POLICE SEARCHED CAPITOL HILL DURING THE NIGHT AND WERE CONTINUING THEIR SEARCH TODAY FOR THE MAN. IT WAS THE FIRST REPORTED "CHLOROFORM" CASE HERE IN MANY MONTHS.

Miss Klause said she got off a Summit avenue street car at East Thomas Street shortly after 9:30 o'clock. As the car drew away, a man stepped from behind a telephone pole, seized her and shoved the handkerchief in her face.

She twisted from his grasp and ran, screaming, toward her home, nearly a block away. The man followed her to the steps of the apartment building, but gave up the chase as she entered the building and ran to her apartment.

Miss Klaus pointed out the man to her father, Albert C. Klaus, but dissuaded him from pursuing her assailant because of fear he might be armed.

Klaus telephoned police, but prowler automobile crews were unable to trace the man.

Miss Klaus said her assailant was about 5 feet 11 inches tall and wore a slouch hat.

THE SEATTLE DAILY TIMES, #6, May 4, 1934. H.E.R.

POISON LEAVES OF NIGHTSHADE KILL LITTLE GIRL

In the first case of its KIN*G* EVER REPORTED HERE, 4-YEAR OLD ANGELINE D'-

AMBROSE, ONLY CHILD OF MR. AND MRS. ANGELO D'AMBROSE, 207 FOURTH AVE. N., DIED SUDDENLY LAST NIGHT AT HER HOME AFTER EATING SOME OF THE LEAVES OF A POISONOUS PLANT IDENTIFIED BY DEPUTY CORONERS AS BELLADONNA, OR DEADLY NIGHTSHADE.

DEATH STRUCK IN A FEW MINUTES, BEFORE THE GIRL'S PARENTS REALIZED WHAT SHE HAD EATEN.

DR. C. W. JOHNSON, DEAN OF THE PHARMACY DEPARTMENT AT THE UNIVERSITY OF WASHINGTON, ALLAYED FEARS OF SEATTLE PARENTS TODAY BY EXPLAINING THAT BELLADONNA IS NOT NATIVE TO THIS REGION AND GROWS HERE ONLY OCCASIONALLY.

Dr. W. H. Coreon, chief deputy coroner, said the girl found the plant growing wild near her home. * * * * * [78]

THE SEATTLE DAILY TIMES, #6, May 4, 1934 — Page 1, Col H.E.R.

DR. E. C. RUGE, HEAD
OF STATE HOSPITAL,
QUITS

Resignation of Dr. E. C. Ruge, superintendent of the NORTHERN HOSPITAL FOR THE INSANE AT SEDRO WOOLLEY, WAS ANNOUNCED BY GOV. CLARENCE D. MARTIN

TODAY. IT WILL BE EFFECTIVE JUNE *L*, THE DATE SET FOR THE RETIREMENT OF JOSEPH ST. PETER, SUPERINTENDENT OF THE STATE REFORMATORY AT MONROE.

THE NORTHERN HOSPITAL, LIKE THE REFORMATORY, WAS INVOLVED IN A LEGISLATIVE INVESTIGATION. IN THE CASE OF DR. RUGE, TWO REPORTS WERE FILED WITH GOVERNOR MARTIN, THE MAJORITY BEING EXTREMELY CRITICAL OF THE HOSPITAL ADMINISTRATION AND THE MINORITY WARMLY COMMENDING IT.

OLAF OLSEN, STATE DIRECTOR OF BUSINESS CONTROL, WITH WHOM MR. RUGE'S RESIGNATION WAS FILED YESTERDAY, WAS AT MEDICAL LAKE TODAY. GOVERNOR MARTIN SAID THAT NO OTHER CHANGE IN THE INSTITUTION FOR THE CARE OF THE FEEBLEMINDED WAS CONTEMPLATED.

ALTHOUGH THE POST OF SUPERINTENDENT OF THE NORTHERN HOSPITAL DOES NOT CARRY A LARGE SALARY, PHYSICIANS WHO SPECIALIZE IN NEUROLOGY VALUE IT HIGHLY AS GIVING THEM AN OPPORTUNITY FOR STUDY AND RESEARCH.

SINCE THE LEGISLATIVE INVESTIGATION WAS COMPLETED LAST WINTER, SEVERAL DOCTORS, AMONT WHOM WAS DR. FRANK CLANCEY OF SEATTLE, HAVE

BEEN MENTIONED AS LIKELY TO RECEIVE CONSIDERATION AT THE HANDS OF THE GOVERNOR.

WHILE IN SEATTLE LAST NIGHT ATTENDING THE DINNER GIVEN BY THE ASSOCIATION OF WASHINGTON CITIES, GOVERNOR MARTIN SAID HE HAD NOT DECIDED UPON THE SUCCESSOR TO ST. PETER AND THAT HE WOULD DEAL WITH THE RESIGNATION OF DR. RUGE WHEN IT CAME TO HIM. HE RECEIVED THE RESIGNATION WHEN HE RETURNED TO OLYMPIA.

THE SEATTLE DAILY TIMES, #6, May 5, 1934 — P. 1, Col. 8. C.L.S.

FREIGHTER, ASHORE OFF COLUMBIA, ASKS AID

Fifty-Mile Gale Hampers Efforts to Rescue Those Aboard Childar; Vessel Laden With Lumber.

Ashore in a fifty-mile gale on the north spit at the mouth of the Columbia River, the big NORWEGIAN FREIGHTER CHILDAR WITH A CREW OF THIRTY MEN ABOARD, AT 9:05 o'clock THIS MORNING FLASHED AN SOS CALL SAYING SHE WAS IN NEED OF IMMEDIATE ASSISTANCE.

THE CHILDAR GROUNDED IN A SOUTHERLY STORM AND THICK RAIN, according to

an Associated Press dispatch from Portland.

THE WEATHER BUREAU STATION AT NORTH HEAD, NEAR THE MOUTH OF THE COLUMBIA, REPORTED A FIFTY-MILE GALE AT 5 O'CLOCK THIS MORNING AND A MAXIMUM VELOCITY OF FIFTY-SIX MILES DURING LAST NIGHT.

FOUR LIFEBOATS WERE SWAMPED AND LOST WHEN EFFORTS WERE MADE TO LOWER THEM FROM THE CHILDAR, THE COAST GUARD STATION AT SEATTLE WAS INFORMED TODAY.

Apparently none was in the boats at the time, according to United Press reports.

A BREECHES BUOY MAY BE USED TO RESCUE THE MEN.

THE DISTRESS MESSAGE FROM THE CHILDAR WAS INTERCEPTED BY THE SEATTLE HARBOR RADIO STATION AT PIER 1 AND BY OTHER STATIONS ON THE PACIFIC COAST.

THE CHILDAR, A UNIT OF THE FLEET OF THE SOUTH AFRICAN DISPATCH LINE, WAS BOUND FROM LONGVIEW FOR CAPE TOWN AND OTHER SOUTH AFRICAN PORTS, LADEN WITH LUMBER AND OTHER FREIGHT. SHE SAILED FROM LONGVIEW AT 2 O'CLOCK THIS MORNING. HER HOLDS ARE FILLED TO CAPACITY AND SHE CARRIES A DECKLOAD OF LUMBER.

In addition to cargo lifted on the Columbia River, the vessel loaded in British Columbia. She did not

come to the Sound this voyage. The only call between the Columbia River and Cape Town was to be San Pedro for bunker supplies. * * * * [79]

THE BELLINGHAM HERALD, May 10, 1934 — P. 1, C. 2. C.L.S.

STRIKE MARKED BY FIGHT AT PORTLAND

Several Suffer Minor Injuries; Strikers Disable States Carrying Workers

SAN FRANCISCO TENSE

1,000 Longshoremen Parade; Some Ships Moving

SAN FRANCISCO, May 10.—(AP)—A clash between *striking longshoremen and non-union workers* occured today at Portland while waterfront employers in other Pacific coast ports were endeavoring to recruit men to load idle ships tied up by the walkout.

SEVERAL MEN SUFFERED MINOR INJURIES IN A FIST FIGHT at Portland where the strikers disabled three stages which were to have transported 100 men to the docks.

NOT A SINGLE SHIP IN PORTLAND harbor WAS BEING WORKED, WHILE 300 PICKETS PATROLLED THE DOCKS and SEVERAL HUNDRED STRIKERS GATHERED AT THE WATERFRONT.

AT LOS ANGELES, Edwin Nichols, manager of

the marine service bureau, said the SHIPS WERE LEAVING THE HARBOR ONLY SLIGHTLY BEHIND SCHEDULE AND THAT 20 men were put to work on Cargo. "There will be *800* MEN AT WORK ALONG OUR FORTY MILES OF WATERFRONT *here today,"* Nichols said.

A. H. Peterson, secretary of the Los Angeles International Longshoremen's association local, declared the strike was still effective and that less than 100 men worked yesterday.

Los Angeles employers fitted out two OLD SAILING BOATS, the Indiana and the W. H. Harriman, to be *used in sheltering the workers.* Two RAILROAD SLEEPERS and a DINING CAR also *were pressed into service to care for arrivals of longshoremen* FROM OUT OF TOWN.

The I.L.A. officials said their policy was to maintain an orderly strike and there were no disorders.

About 1,000 longshoremen paraded along the Embarcadero here today, singing and jeering drivers of trucks. More policemen hurried to the waterfront to prevent disorders. There were occasional minor brushes between the officers and strikers yesterday as the police made the men keep moving.

Meanwhile the employers held conferences and endeavored to recruit enough men to work the ships.

Vessels which had been loaded completely, or in part, before the strike was called at 8 a. m. yesterday, sailed on schedule generally, the marine department of the San Francisco Chamber of Commerce reported. The real test of the strike is expected today, employers admitted. Foremen joined

with recruited labor at some places in an attempt to prevent a cargo jam.

At principal ports, the employers, who have rejected demands of the International Longshoremen's association, Pacific division, for increased pay and shorter hours, sought non-union workers. "Experience desirable but not necessary," read advertisements announcing "longshoremen wanted!"

Against this move, officials of the longshoremen's association, who declared 10,000 members had joined in the walkout at all ports, raised the threat of sympathetic action by other organized workers, principally the teamsters.

At Seattle and Oakland, teamsters refused to handle freight to or from docks and similar support for the strike was predicted at other cities by William J. Lewis, Pacific division president of the longshoremen. Union hotel cooks here, also on strike, offered to donate their services at soup kitchens to feed strikers should such aid become necessary.

Barbed wire barricades appeared here at a pier where non-union workers are being housed, and police at most ports were supported by reinforcements to guard against violence. Attempted demonstrations on the waterfront here were quickly broken up without arrests. The strikers and their sympathizers confined their [80] protests against recruited dock hands to jeers.

Hopes of a settlement rested with a mediation board appointed by President Roosevelt when a

similar walkout was threatened some weeks ago.

Thomas G. Plant, representing the waterfront employers, declared the union's demands would not be granted. The longshoremen seek a thirty-hour week in place of the present forty-eight hour work and an increase in pay from 85 cents to $1 an hour, with $1.25 an hour for overtime.

* * *

Seattle, May 1.—(AP)—About four out of twenty ships in the harbor were being worked today at THREE TERMINALS and three lines prepared to HOUSE MEN to take the place of longshoremen out on strike in vessels which have been tied up.

The steamship REDONDON *was brought from West Seattle to the* ALASKA STEAMSHIP COMPANY'S piers for that purpose and the Pacific Steamship Company and American Mail Line brought the steamers Queen and Admiral Rogers from Lake Union to Elliott Bay for the same use.

The Pacific Lighterage Company said it has recruited 200 men to take the place of those out on strike.

The ships being worked are the Yukon, arriving today from Alaska, the Cordova, posted to sail tonight for Alaska ports, the Admiral Chase, discharging cargo from California and the President Jefferson, loading for the Orient.

A sympathetic strike by teamsters was under way here and another one, by master mates and pilots, was being considered as the second day of the longshoremen's strike opened, with all Pacific Northwest ports affected. Approximately 4,500 men were estimated to be out over the area.

The teamsters' strike began here at 1 p. m. yesterday, after the longshoremen had gone out at 8 a. m., and Dave Beck, Northwest representative, announced last night that only one truckload of merchandise had reached the city's docks during the day.

The spread of the strike to include tugboat workers was discussed last night at the meeting of the Central Labor Council by delegates from the Masters, Mates & Pilots association.

Leaders reported they understood an attempt was to be made to load some boats from barges in the stream, instead of at the docks, and that if so a strike would be called. Captain John M. Fox, secretary, said a special meeting was to be called today to vote on a sympathetic strike.

Meanwhile, a spokesman for the Waterfront Employers' association said that no "radical action" was planned, but that the cargo "must be moved."

"If the men don't come back, others will have to be hired to take their places," he said.

THE SEATTLE DAILY TIMES, #6, May 10, 1934 — Page 1, Col. 2 C.L.S.

BICKELL, IN ADMISSION, HAZY ABOUT ACCOUNTING

Money Taken in Varying Amounts for Years, Says Jailed Port Cashier; Third Man is Suspected

DISCOVERY OF A $46,000 SHORTAGE IN THE PORT OF SEATTLE'S $60,000 REVOLV-

ING FUND WAS REPORTED TO THE PROSECUTOR AND PORT AUTHORITIES BY STATE EXAMINERS TODAY AS THEY DELVED INTO THE BOOKS AFTER THE SUICIDE YESTERDAY OF MATT. H. GORMLEY, 67 YEAR OLD PORT AUDITOR, the arrest of his aide, ALLAN L. BICKELL, 56? THE PORT'S CASHIER, AND BICKELL'S REPORTED ADMISSION THAT HE SHARED IN THE EMBEZZLEMENTS.

Whether THIS IS IN ADDITION TO THE $70,000 PORT GENERAL FUND SHORTAGE cannot be determined until a detailed check of both funds for the past sixteen years is completed, STATE EXAMINER J. L. DITTEMORE SAID. THE SHORTAGES, he found, HAD BEEN "COVERED UP" BY JUGGLING MONEYS FROM ONE FUND INTO THE OTHER AND BACK AGAIN.

Bickell and Gormley were under bond, and just how much of the missing money the port will lose is uncertain. Bickell is under $10,000 surety bond, written by the Fidelity & Deposit Company of Maryland, through the Seattle agents, John [81] A. Whalley & Co. Gormely's bond, furnished by the same company, is $50,000, having been raised from $20,000 this year.

As some of the money was taken while Gormely's bond was only $20,000, the bond company has retained Attorney Loren Grinstead to represent it and combat any effort to collect the full amount of the present Gormley bond.

At any rate, Prosecutor Robert M. Burgunder and Port President Smith M. Wilson reported, Bickell sets the total shortage at $80,000, and confesses that he got part of it, but is hazy, they said, on what he did with his share and does not know how Gormley disposed of his.

Burgunder and Wilson said Bickell told them the money was taken out of the port office's cash drawer in varying amounts up to $1,000 in a lump sum. They said Bickell told them yesterday afternoon that his last misappropriation totaled $120 and that he withdrew it Tuesday, the day Dittemore paid the port officials a surprise visit and found the general fund short.

When he shot himself to death in the brush outside the north city limits at dawn yesterday Gormley left a note assuming the entire blame.

One theory on which Prosecutor Burgunder is working is that a third man may have shared in the embezzlements and that Bickell in life is trying to shield him as Gormley did in death.

This theory would tend to clarify the puzzle of what was done with the money. Neither Bickell nor Gormley lived extravagantly, made large investments, speculated or had abnormally large debts their families and closest friends say.

Bickell, who is held incommunicado and will not be charged until the audit is complete, Burgunder said, could not detail how he spent the money he says he got, nor how much it totaled.

Burgunder said Bickell told him the withdrawals started about fourteen years ago and that Bickell

indicated most of it was taken in small amounts and just "frittered away" in general expenses.

State Auditor Cliff Yelle, who ordered Dittemore to make the current audit Tuesday, several days ahead of the usual time, he makes his appearance at the Port's Bell Street Terminal offices, returned to Olympia last night after assisting the authorities in their investigations yesterday.

Burgunder said a temporary holding charge may be filed against Bickell today, if he seeks his liberty, until the audit is complete and a decision is made on what charge to place against the cashier.

The Port commissioners, investigating Port finances yesterday, had County Detectives William H. Sears and R. A. J. Allingham take Bickell from the county jail to the Port offices for long questioning.

The commission president, Mr. Wilson, said that one of their first discoveries was that Gormley neglected to obey a resolution adopted last fall, authorizing him to cut the $60,000 revolving fund to $50,000.

"We had decided that it was unwieldy," Mr. Wilson said. "Matt had been with the Port a long time. He knew resolutions are to be obeyed. Yet he failed to reduce the amount of the revolving fund. By failing to reduce it, he continued to have the same amount $60,000, to juggle."

Asked if the commissioners had not noted by port financial statements that the revolving fund had not been reduced, Mr. Wilson said:

"We noticed it; but, you know, the revolving

fund catches all the odds and ends and sometimes runs over $60,000. It varies much of the time. When I noted it was still above $60,000 I supposed that Matt had just received some additional receipts."

The $46,000 shortage in the revolving fund was discovered yesterday when Yelle and Dittemore obtained the records from four banks in which the revolving fund is held.

The original shortage, $70,000, had been discovered by Mr. Dittemore in the Port's own books on the general fund.

"So far," the state examiner said today, "I have been able to make but a cursory examination of the records of both funds. Things were in pretty much of a turmoil yesterday and I was not able to get much checking done.

"The juggling of the two funds, to evade discovery of shortages, apparently [82] has gone on for such a long period, and the funds have been juggled back and forth so many times that each item will have to be checked back and forth until we can determine just how much is missing and on what dates it was abstracted."

But what is puzzling the authorities and those who knew the two men, even more, is what was done with the money after it was abstracted.

Butterworth's, where Gormely's body was taken yesterday, said today no funeral arrangements have been made. Mrs. Gormley, already in poor health, was nearly prostrated by the news of the accusa-

tions against her husband, and, a few hours later, news that he had killed himself.

Besides his widow, Gormley is survived by six children. They are John H. Gormely and Mrs. Rowena Steffin, children of his first wife, and Helen, Eileen, Betsy and Matt K. Gormley children of the present Mrs. Gormley.

Gormley, the authorities recalled, installed the system of bookkeeping which he "beat." He initiated the system for the state when he was a state examiner checking against just such shortages as Dittemore discovered in Gormley's accounts this week.

Then when W. S. Lincoln, port auditor, became a port commissioner, Gormley went into the port office as Lincoln's successor.

Gormley was born in Delevan, Wis., in March, 1867, and came to Seattle with his parents in 1878. He was graduated from the Territorial University here in 1886 and had a continual military record from the time he served in the University cadets until he retired as a colonel from the Washington National Guard in 1911.

From the University cadets, Gormley enlisted in a volunteer company known as the Seattle Rifles. A state militia was organized after Washington gained statehood and Gormley was a first lieutenant in Company B of that militia.

That company was taken into the United States Army and went to the Philippines in the Spanish-American War.

George H. Fortson, company captain and a well known attorney here, was killed in action in the Philippines and was succeeded by Gormley.

A new National Guard was organized after the Spanish-American War. Gormley became a colonel in that organization and remained in service until about 1912.

Jackson Silbaugh, attorney, said Gormley drew a federal pension for Army service until recently. In his suicide note Gormley told his wife to see Silbaugh about a widow's pension. Silbaugh said Mrs. Gormley's income would determine whether she will receive a pension.

Friends said Dittemore, who discovered the apparent shortage that led to Gormley's suicide, served with Gormley in the Philippines.

Brig. Gen. Maurice Thompson, the Adjutant General of the Washington National Guard, detailed Gormley's military record as follows:

Enlisted in Company B. 1st Washington Infantry, April 30, 1886; commissioned second lieutenant July 1, 1893, and first lieutenant February 19, 1895.

Mustered in at the outbreak of the Spanish-American War as first lieutenant of Company B. 1st Washington Volunteers. Promoted to captain April 10, 1899, to succeed Captain Fortson, killed in the Philippines. Mustered out at the end of the war.

Commissioned captain, 1st Washington National Guard, March 26, 1902, and served as regimental adjutant until the regiment was renamed the 2nd

Washington National Guard May 15, 1903, in which he continued as captain. .

Commissioned lieutenant colonel August 4, 1906; transferred to colonel, Coast Artillery, October 26, 1906, and was retired at his own request, on completing ten years as a commissioned officer, December 7, 1911. [83]

THE SEATTLE DAILY TIMES, #6, May 10, 1934 — Page 11, Col. 1. C.L.S.

LINER LEVIATHAN WILL RETURN TO SERVICE JUNE 9

RETURNING TO SERVICE AFTER BEING TIED UP FOR MORE THAN A YEAR, THE STEAMSHIP LEVIATHAN OF THE UNITED STATES LINES, LARGEST VESSEL FLYING THE AMERICAN FLAG, WILL SAIL FOR NEW YORK JUNE 9 ACCORDING TO ADVICES RECEIVED TODAY by G. Hazen Nickerson, general passenger agent for the company in Seattle.

THE 59-956-TON VESSEL HAS BEEN GIVEN AN EXTENSIVE OVERHAUL SINCE SHE WAS WITHDRAWN FROM THE TRANSATLANTIC ROUTE.

The Leviathan will go to Plymouth, Cherbourg and Southhampton. Her second voyage from New York is scheduled for June 30. The first west-

bound sailing will be from Southampton June 20, Mr. Nickerson was advised.

THE GREAT LEVIATHAN, ONCE THE SYMBOL OF GERMANY'S ATLANTIC PROWESS AND LATER THE QUEEN OF THE AMERICAN MERCHANT MARINE, HAS RESTED IGNOMINIOUSLY AT HER HOBOKEN PIER SINCE EARLY LAST YEAR, WHEN SHE WAS WITHDRAWN FROM SERVICE — A VICTIM OF THE DEPRESSION. HER OWNERS SAID SHE LOST $80,000 A TRIP IN HER LAST SEVEN CROSSINGS.

Under an agreement with the United States Shipping Board, she will make a minimum of seven round trips a year with Plymouth, Cherbourg, Southampton and New York ports of call.

THE SEATTLE DAILY TIMES, #6, May 10, 1934. — Page 11, Col. 5. C.L.S.

C.C.C. WORKERS FIGHT CRICKETS

By Associated Press

Wenatchee, Thursday, May 10.—FIGHTING A LOSING BATTLE AGAINST AN INVASION OF COULEE CRICKETS, *Nahahum Valley* RANCHERS yesterday sought the assistance of *50 C.C.C.* FOREST WORKERS to stop the pest horde. CROSSING THEIR DITCHES AND EVADING THEIR POISON, the CRICKETS

are DENUDING MORE of the DISTRICT'S GARDENS AND FIELDS

George Day, deputy horticultural inspector, and William Bales, W.S.C. specialist, are in charge of the work.

THE SEATTLE POST INTELLIGENCER, May 14, 1934. — Page 2, Col. 3. C.L.S.

MAN BEATEN IN STRIKE DISPUTE

THROUGH BRUISED LIPS, JOSEPH J. RYAN, FORTY TWO, TOLD POLICE YESTERDAY HE WAS A VICTIM OF THE LONGSHOREMEN'S STRIKE — AND A MARTYR TO HIS HONEST CONVICTIONS.

HE WAS IN KING COUNTY HOSPITAL WITH A FRACTURED ANKLE AND LACERATIONS OF THE LIP, THE RESULT, HE SAID, OF VENTURING TO EXPRESS AN OPINION CONCERNING THE STRIKE IN A WATERFRONT BEER PARLOR.

HE WENT INTO THE PLACE, NEAR E. MARGINAL WAY AND STACY ST., EARLY YESTERDAY, HE SAID, AND FOUND A CROWD ASSEMBLED. DISCUSSING THE STRIKE WITH A NEIGHBOR at the counter, he said, he ventured to ask:

"What are you fellows striking for? You can't win, anyway."

With a rueful grimace he told officers:

"And that's the last thing I remember." [84]

THE BELLINGHAM HERALD, May 14, 1934.
— Page 4, Col. 5. C.L.S.

TUGWELL SPEAKER

War Waged Against Misery Poverty, Stupidity

OBERLIN, Ohio, May 14,—(AP)—Dr. Rexford G. TUGWELL, assistant secretary of agriculture, told the graduating class of OBERLIN COLLEGE THAT THE AMERICAN PEOPLE ARE ENGAGED IN "A WAR AGAINST MISERY, AGAINST POVERTY, AGAINST HUMAN STUPIDITY."

He called the NEW DEAL "THE FIRST GREAT NATIONAL COUNTER-OFFENSIVE IN THAT WAS AGAINST HUMAN MISERY" and declared "it is THE ESSENCE OF THE NEW DEAL THAT ITS PRACTITIONERS ARE HONESTLY TRYING TO FIND WAYS TO ESTABLISH THE SECURITY AND ABUNDANCE TO WHICH OUR RESOURCES ENTITLE AMERICANS. And we ask for tolerance on the plea that we are preparing the way for the more expert work which you may do."

Tugwell said college students and the American people "cannot escape the realization THAT SOMETHING RATHER APALLING HAS BEFALLEN OUR CIVILIZATION, WHEN THE PLENTY WHICH WE ARE SO ABUNDANTLY EQUIPPED TO PRODUCE AUTOMATICALLY CAUSES NATION-WIDE MISERY,

SUFFERING, DESTITUTION, AND HOPELESSNESS, WHETHER IT HAS COME HOME TO YOU THROUGH PERSONAL PRIVATION OR ONLY THROUGH OBSERVATION."

"We all of us have to face this terrible and baffling paradox together and to find the means for its resolution."

He expressed belief that in the future standard courses in economics and politics will be conducted with no text books other than those supplied by the daily newspaper and then the students will examine the professor instead of the professor examining the students . . . "

THE SEATTLE DAILY TIMES, #6, May 14, 1934 — Page 1, Col. 5. C.L.S.

PAIR HOLD UP RAINIER CAR LINE OFFICE; SHOT FIRED

Two Employes Locked in Tool Shed; Robbers Escape with $100; Fail to Open Safe Containing $600.

TWO MASKED ROBBERS HELD UP THE OFFICES OF THE SEATTLE & RAINIER VALLEY RAILWAY COMPANY, 5115 RAINIER AVE., AT 2:30 O'CLOCK THIS MORNING, LOCKED TWO EMPLOYES IN A TOOL SHED AND STOLE $100 BEFORE ANOTHER EMPLOYE FRIGHTENED THEM AWAY AS THEY TRIED TO OPEN THE SAFE.

ONE SHOT WAS FIRED BY THE ROBBERS WHEN WILLIAM T. WILLIAMS, NIGHT FOREMAN AT THE OFFICE AND CAR BARNS, REACHED FOR HIS FLASHLIGHT INSTEAD OF PUTTING UP HIS HANDS WHEN HELD UP. THE ROBBER APPARENTLY SHOT OVER WILLIAMS' HEAD TO FRIGHTEN HIM. WILLIAMS SURRENDERED.

WALTER M. BROWN, COMPANY PRESIDENT, SAID BETWEEN $600 AND $700 IN CARMEN'S RECEIPTS WERE IN THE SAFE.

The robbers first held up M. C. Hawkins, watchman, while he was eating lunch. They put him in the shed, then seized Williams and locked him in with Hawkins.

The robber pair ripped open a chute down which street car operators slide their receipts into the safe in money bags. They had gotten only $100 when John W. Huber, a janitor, arrived at work and saw them. [85]

Huber ran to Columbia Precinct Police Station, about a block away, and returned with policemen, but the robbers had escaped.

Hawkins and Williams broke out of the tool shed after being locked in about an hour.

THE SEATTLE DAILY TIMES, #6, May 14, 1934 — Page 1, Col. 5. C.L.S.

CATLETT, JR., INJURED BY SHIP BLAST.

FRED W. CATLETT, JR., 21 YEARS OLD, SON OF THE SEATTLE ATTORNEY WHO WAS APPOINTED RECENTLY TO THE FEDERAL HOME LOAN BANK BOARD, AND A FELLOW WORKER WERE BURNED ON THE HANDS AND FACE ABOUT 2:30 O'CLOCK THIS MORNING IN A GASOLINE EXPLOSION ABOARD THE CANNERY SHIP LA MERCED AT PIER 40, SMITH COVE.

YOUNG CATLETT, A FORMER UNIVERSITY OF WASHINGTON STUDENT, LEFT SCHOOL RECENTLY AND JOINED THE LA MERCED CREW TO GO TO ALASKA.

GEORGE GIRVAN, 43-YEAR OLD MECHANIC, 432 FIFTH AVE. N., AND CATLETT WERE INSTALLING AN ENGINE WHEN A PAIL OF GASOLINE EXPLODED. THEY SAID THEY DID NOT KNOW WHAT CAUSED THE EXPLOSION.

Another employe put out the fire without damage to the ship, owned by the Alaska Southern Packing Company.

Catlett was able to go to his home, 3431 Cascadia Ave., after treatment at Seattle General Hospital. Girvan also was treated there and sent home. [86]

SEATTLE POST INTELLIGENCER, May 14, 1934 — Page 1, Col. 2. C.L.S.

GIRL BARES STORY OF GIFTS FROM BICKNELL; LOVE LETTERS OF OTHER WOMEN UNCOVERED

Pretty Red-Head Denies Knowledge of Thefts

THOUGHT RICH

Had Sincere Affection for Cashier, She Avers.

—

By Marian Badcon

Tearfully protesting that she had NO KNOWLEDGE OF HOW THE GIFTS LAVISHED UPON HER BY A. L. BICKELL, EMBEZZLING PORT EMPLOYE, WERE PAID FOR — MRS. MARGARET VAN KLEECK, YOUNG RED-HEADED AND BEAUTIFUL, TOLD HER STORY FOR THE FIRST TIME YESTERDAY to a Post-Intelligencer Reporter.

AFTER MORE THAN TWO YEARS' FRIENDSHIP WITH THE MAN WHO HAS ADMITTED HIS PART IN THE $120,000 SHORTAGE IN PORT FUNDS, MRS. VAN KLEECK DECLARED SHE NEVER SUSPECTED HER TRIPS TO CALIFORNIA AND A CRUISE TO RUSSIA MIGHT BE FINANCED BY TAXPAYERS' MONEY.

"I THOUGHT IT PROBABLY CAME FROM STOCKS AND BONDS," SHE SAID. "I THOUGHT HE DREW A BIG SALARY AND HAD INVESTED HIS MONEY. EVEN WHEN HE WAS ARRESTED I NEVER DREAMED IT WAS FOR ANYTHING MORE THAN BEING QUESTIONED ABOUT MR. GORMLEY'S SUPPOSED SHORTAGES."

MATT H. GORMLEY, PORT AUDITOR AND BICKELL'S SUPERIOR OFFICER, COMMITTED SUICIDE WHEN THE SHORTAGE WAS DISCOVERED IN HIS ACCOUNTS. BICKELL'S ARREST AND CONFESSION FOLLOWED.

"I DIDN'T KNOW WHAT TO DO," THE GIRL WENT ON WITH HER STORY. "HE WAS SO KIND AND GENEROUS. EVERYONE LOVED AND RESPECTED HIM. THEN I DECIDED I HAD BETTER TELL WHAT I KNEW AND AID THE OFFICERS IF I COULD."

HER DECISION TO TELL WHAT SHE KNEW CAME AFTER SHE REALIZED HER NAME WITH OTHERS HAD BEEN DRAWN INTO THE MANY SIDED LIFE OF THE PORT EMPLOYE.

FOR SHE WAS NOT THE ONLY WOMAN ON WHOM BICKELL LAVISHED GIFTS AND ATTENTIONS, PROSECUTOR R. M. BURGUNDER REVEALED YESTERDAY.

"HIS APARTMENT WAS FULL OF LOVE LETTERS. THERE WILL BE OTHER WOMEN'S NAMES IN THE INVESTIGATION BEFORE WE FINISH," BURGUNDER SAID.

County Detectives R. A. J. Allingham and William H. Sears, accompanied Mrs. Van Kleeck to the port commission offices yesterday where she told her story to Burgunder and Smith Wilson, port commissioner.

WEEPING AND CALM BY TURNS THE YOUNG WOMAN RELATED HER COMRADESHIP WITH BICKELL. SHE PLACED NO ESTIMATE ON THE TOTAL VALUE OF THE GIFTS SHE HAD RECEIVED FROM HIM. SHE MET HIM FIRST A LITTLE MORE THAN TWO YEARS AGO. HIS FIRST GIFT, SHE SAID, WAS WHEN HE BOUGHT GLASSES FOR HER LITTLE DAUGHTER. AFTER THAT —

"THE GIFTS WERE IN APPRECIATION OF MY COMPANY AND HIS LONELINESS," SHE SAID.

ACCORDING TO BURGUNDER, BICKELL'S GIFTS TO HER INCLUDED A PIANO AND ELECTRIC REFRIGERATOR, A DINING ROOM SET FROM HIS FORMER HOME, A FUR COAT FOR HERSELF AND HER MOTHER, TRIPS TO CALIFORNIA, AND THE CRUISE TO RUSSIA, DENMARK AND FINLAND.

"I do not know who first told the officers about me. Perhaps it was Mr. Bickell, perhaps someone else. Our friendship was no secret," Mrs. Van Kleeck said. "We were known in the night clubs where we went together, and at the port office our friendship was known, although I never was in this office but once—until Monday—".

Mrs. Van Kleeck admitted that she and Bickell had considered marriage, if ever it might be possible. But there was no formal engagement, she insisted, and she wore no jewelry. [87]

She did not question his sources of income.

"I knew he had money because of the amounts he paid for medical attention for his wife. He did everything for her," she said. "And when others advised him to send her to an institution, I tried to persuade him not to.

"He worried about her, and grieved for his own dead little daughter.

"My sympathy is all with him as it has been these past two years. I did care. He was kind. My sentiments are absolutely sincere. Of course I will go to see him at jail if I may. He was very good to me."

Sometimes as she talked with the officers she dabbed at her eyes with a handkerchief. Often her face was hidden by her wide-brimmed dark blue hat. Her tailored blue coat showed no extravagance. She has a job, she said, and she must keep it.

THE SEATTLE POST INTELLIGENCER, May 14, 1934 — Page 3, Col. 1

NOTES REVEAL CASHIER HAD MANY FRIENDS

Officers in Dark as to Disposal of Cash After Quizzing Mrs. Van Kleeck All Day.

LOVE LETTERS, BILLS, RECEIPTS, MEMOS — SCRAPS OF PAPER TREASURED OR FORGOTTEN IN A. L. BICKELL'S LIFE AND FOUND IN HIS DESK AFTER HE WENT TO JAIL — WERE BEING STUDIED YESTERDAY IN THE HOPE OF FINDING WHAT BECAME OF HIS SHARE IN THE $120,000 EMBEZZLED OVER A PERIOD OF YEARS FROM THE PORT OF SEATTLE.

SMITH WILSON, PORT COMMISSIONER, WITH PROSECUTOR ROBERT M. BURGUNDER AND COUNTY DETECTIVES R. A. J. ALLINGHAM AND WILLIAM H. SEARS, SPENT MOST OF YESTERDAY GOING THROUGH STACKS OF ENVELOPES TO FIND, IF THEY COULD, WHERE THE MONEY WENT.

THE LOVE LETTERS, TENDER MISSIVES FROM WOMEN IN BICKELL'S LIFE, AND LONG DISTANCE TELEPHONE CALLS, WERE BEING CHECKED TO FIND WHO MIGHT HAVE SHARED IN THE SPOILS.

MOST OF THE LETTERS WERE OLD. MOST OF THE BILLS HAD BEEN PAID.

BUT FROM THE ARDENT PHRASES OF SOME OF THE NOTES, ALLINGHAM AND SEARS DECLARED, IT WAS LEARNED THAT MORE THAN ONE WOMAN HAD SHARED IN THE MIDDLE-AGED PORT EMPLOYE'S ATTENTIONS.

The one woman upon whom he confessed he ravished most of his gifts, quiet, copper-haired Mrs. M. Van Kleeck spent several hours with the officers yesterday, answering queries as to Bickell's mode of living.

But even the cost of gifts she told of receiving from him, including a trip abroad, were but a fraction of the missing funds, they said.

"I still can't see where the money went," Wilson sail yesterday as he personally opened and examined letters and bills.

The port commission will meet with State Auditor Cliff Yelle at 10 o'clock this morning to discuss details of the port audit extending over the entire period of the misappropriated funds. Whether J. L. Dittemore, state examiner and longtime friend of Matt H. Gormley, port auditor, who ended his life when the shortages were discovered, will conduct the audit, or whether Yelle will detail someone else, may be decided then.

From paper slips left by Bickell, it appeared he had drawn about $1,400 last year in addition to his salary, Wilson said.

The slips, which Bickell after his arrest told officers he had [88] meant to destroy, but forgot, still

remain the most important accounting of the taxpayers' looted port funds, Wilson declared.

Declaring they believe a serious situation exists because of the disclosure of shortages in the port funds, members of the Seattle Association of Public Accountants yesterday made an offer to the port commissioners and Yelle to conduct an independent audit of port finances at fees prescribed by statutes, which is less than their usual charges.

The offer was made after the board of governors passed a resolution to this effect at a meeting held last week. [89]

THE SEATTLE DAILY TIMES, #6, May 14, 1934 — Page 3, Col. 6. C.L.S.

311 DELEGATES EXPECTED
AT DEMO MEETING

Democrats of King County were engated today IN SOLVING THE PROBLEM OF TRANSPORTING 311 DELEGATES TO THE STATE CONVENTION SCHEDULED TO MEET IN WALLA WALLA MAY 25. THAT THE ENTIRE DELEGATION WOULD ATTEND THE STATE MEETING WAS INDICATED DURING THE CLOSING HOUR OF THE COUNTY CONVENTION SATURDAY WHEN AN UNUSUAL DEMAND FOR PLACES WAS STAGED.

THE PRINCIPAL BUSINESS OF THE STATE CONVENTION WILL BE THE PREPARATION OF A PLATFORM OF PRIN-

CIPLES AND MANY DEMOCRATS CLAMOR FOR THE HONOR OF HELPING TO FORMULATE THE DECLARATION OF PARTY FAITH.

An attempt to place the entire delegation of 311 under the unit rule failed just before adjournment. Senator James A. Murphy, executive secretary of the Washington Men's Democratic Club, tried upon several occasions during the afternoon to get the convention to act on the unit rule motion, but it was only a few minutes before 6 o'clock, the hour set for adjourment that he was successful in getting a vote. The resulting shouts of ayes and noes were so nearly equal that Chairman John Ambler could not decide which side prevailed.

Before the motion could be put again the hour for adjournment had arrived and the question of adopting the unit rule was left with other unfinished business.

Failure to instruct the King County delegation to vote as a unit, will not prevent district delegations from adopting the rule, delegates assert. They plan to hold pre-convention caucuses and to decide upon their several courses of action.

Many more conservative Democrats today were studying the platform adopted at the county convention Saturday. The declaration of principles, they believe, shows a strong influence of the party's left wing. Although the more radical group was signally defeated in its efforts to organize the convention, its influence on the committee on plat-

form was profound, Democratic leaders assert today.

John Ambler, keynoter, was elected temporary chairman and then permanent chairman by overwhelming vote, after a noisy minority linked with the forces of County Commissioner John C. Stevenson, had made a stormy vocal protest. [90]

SEATTLE POST INTELLIGENCER, May 14, 1934 — Page 1, Col. 5. C.L.S.

STATE POLICE RAID SPEAKIES HERE; 5 HELD

Liquor Board's Action in Swooping Down on Resorts Seen as Challenge to *D*Dore, Norton

Lindberg Takes Charge of Party; Olympia Men Cross Paths with Sheriff Bannick's Aids.

IN A DRASTIC RESPONSE TO MAYOR JOHN F. DORE'S CHALLENGE THAT IF IT WANTED SEATTLE SPEAKEASIES CLOSED IT WOULD HAVE TO DO THE JOB ITSELF, THE STATE LIQUOR BOARD CLAMPED THE LID ON SEATTLE'S NIGHT LIFE YESTERDAY.

THE BOARD SENT RAIDING PARTIES OF STATE PATROLMEN AND STATE LIQUOR INSPECTORS SWEEPING THROUGH THE DOWNTOWN DISTRICT ON A WIDE TOUR OF ARRESTS.

Raids on twelve "clubs" came as a dramatic answer to recent statements of Chief of Police L. L. Norton that he could not close speakeasies because "his men couldn't get into them" and Mayor Dore's defiance of the board's wishes, state officials declared.

The series of raids, which sent five men to the county jail charged with illegal sale of liquor under the Steele Act, was ordered by the liquor board, it was revealed last night by W. J. Lindberg, a member of the board.

And from L. C. Brodbeck, assistant attorney general of the state and general counsel for the liquor board came the statement:

"The raids are just a preliminary to what we expect to do a little later. We'll give Seattle a chance to clean house. We invite the cooperation of local authorities.

"But we're going to put speakeasies out of business."

The swift series of raids by state officers upon the twelve clubs followed three raids by deputies of Sheriff Claude G. Bannick, who arrested eight men. Two of the clubs were raided twice in the one night, and a third place, closed when visited by the SHERIFF'S OFFICERS, WAS LATER RAIDED BY THE STATE PATROLMEN.

THE ARRESTS WERE MADE IN THE FIRST FIVE CLUBS VISITED, BUT WHEN THE NEXT SEVEN PLACES WERE VISITED, "THE WORD HAD GONE OUT" AND NO LIQUOR WAS PROCURABLE, THE OFFICERS SAID.

A squad of nine state patrolmen and nine liquor

inspectors all from Olympia were assigned to the raids and arrived in Seattle about midnight Sunday. Breaking into pairs—a patrolman and an inspector, both in plain clothes—they started their concerted campaign through the brighter spots of Seattle's night life.

In each of the five places first visited, the pair of officers purchased liquor, immediately poured it into containers to be used as evidence and then arrested the manager or bartender, according to Lindberg, who, with William Cole, chief of the State patrol, was in Seattle to watch results of the raids.

The men arrested will be charged in the King County superior court with illegal sale of liquor under the Steele act, Lindberg declared.

Mayor Dore, when informed by the Post-Intelligencer of the raids, said:

"That's the state's business. Why should we bother?"

"Let them go to it.

"We have a longshoreman's strike on our hands, more important [91] than speakeasies."

The five Seattle "clubs" in which arrests were made by state officers, together with the alleged manager or bartender arrested in each were:

The Domino Club, 516 Union St., Howard Thompson, thirty-four.

The Fifth Avenue Club, 1520 5th Ave., H. C. Nelson, fifty-three.

The National Club, 1408 4th Ave., Frank Winslow, twenty-one.

The Black and Tan Club, Huron Melker, thirty-four.

The New Harlem Club on upper 4th Ave., S. J. Brown, sixty-seven.

Each of the men was held for $500 bail. At a late hour last night, Thompson and Nelson had posted bond and were at liberty.

The Domino and National Clubs were raided twice—once by sheriff's deputies at about 6 p.m. and again by the state officers between 2 and 3 a. m. The Fifth Avenue Club was also visited by sheriff's officers earlier in the evening but they reported it empty and no liquor in sight.

In addition to the raids upon clubs, Brodbeck said, Chief Liquor Inspector Harry O. Bohlke planned to have his men tour Seattle restaurants, giving to proprietors of those selling liquor illegally summons to appear before the state liquor board for a hearing on possible revocation of their licenses.

In announcing a policy of rigid enforcement by state agencies of the Steele act, Brodbeck declared he was speaking as counsel of the liquor board, as well as assistant attorney general of the state.

"All places, whether or not they are legitimate clubs, must comply with the law," he said.

"We plan to use both local police and state agencies here, if Seattle authorities will cooperate. It is really their job, anyway, to enforce the law. If local police won't help we'll go ahead without them.

"The five arrests made in these raids are just preliminary. We shall be very glad to have the local

authorities come in and help us. We certainly have received very little cooperation from them as yet.

"We don't want any controversy with the mayor or other Seattle officials. We invite their cooperation.

"But where liquor is being sold openly in public, even with the subterfuge of 'membership cards,' we're going to close them up."

Lindberg, in commenting on the raids, revealed that several of the places raided or visited have at present their applications for licenses pending before the state liquor board.

"Naturally", he said, "where arrests were made, that fact will be taken into consideration in passing on their applications for licenses.

"The board has granted no club licenses as yet."
[92]

SEATTLE POST INTELLIGENCER, May 14, 1934—Page 1, Col. 8. C.L.S.

STRIKEBREAKERS WILL LOAD SHIPS UNDER POLICE GUARD; DORE DENIES PLEA FOR TROOPS

Shipping Men Doubt Ability of Force to Keep Order

LOSSES CITED

Mayor Determined tl Prevent Marine Tie-Up Here

RESUMPTION TODAY OF OPERATIONS ALONG SEATTLE'S WATERFRONT WILL

DEPEND UPON THE ADEQUACY OF POLICE PROTECTION FURNISHED TO SHIPPERS AND THEIR EMPLOYES BY MAYOR JOHN F. DORE.

THIS WAS THE ANNOUNCED ATTITUDE OF SHIPPING MEN FOLLOWING A CONFERENCE AT THE WASHINGTON ATHLETIC CLUB TO DISCUSS THE TIEUP OF WATERFRONT BUSINESS CAUSED BY THE RAIDS ON SHIPS AND DOCKS SATURDAY BY A MOB OF 2,000 STRIKING LONGSHOREMEN AND SYMPATHIZERS.

MAYOR DORE WAS PRESENT AT THE MEETING AND DENIED THE RENEWED REQUEST OF THE OPERATORS THAT HE URGE GOV. CLARENCE D. MARTIN TO CALL OUT THE NATIONAL GUARD TO MAINTAIN ORDER.

THE MAYOR SAID LAST NIGHT HE HAD INFORMED THE SHIPPING MEN THAT HE BELIEVED THE POLICE DEPARTMENT, REINFORCED BY THE 100 ADDITIONAL MEN SWORN IN SATURDAY was capable of handling the situation and that he had offered to place a force of armed men tomorrow on every wharf and ship being loaded or unloaded by strike breakers.

The mayor left the meeting with the impression that police services would be accepted.

Several shipping men, however, expressed doubt as to the ability of police to protect their property and employes, and intimated they would work no

ships until they are shown that the police can cope with the situation.

"The whole situation is up to the mayor," William C. Dawson, secretary of the Waterfront Employers' Association, said last night. "I do not know what the individual shippers will do today. The operators, however, are not going to appeal directly to Governor Martin to call out the guard."

Several operators who asked that their names be withheld, said unofficially that there would be no activity at their docks today. The only unloading on the water front since the mob of 2,000 men raided vessels Saturday and forced strikebreakers to quit their work, was that of a small lot of fresh salmon from the Alaska Steamship Company's Victoria. This was done with assent of the striking longshoremen.

There were twenty-eight vessels in port last night, four having arrived yesterday. The Santa Rosa, on which Saturday's crowd failed to halt loading operations, sailed at noon yesterday for New York. Two ships, the British steamer Ixion from Hongkong and the Vancouver Maru from Yokohama, are due in port today.

Mayor Dore, in elaborating on his offer of police protection to ship operators, said he told the men he would not appeal to the governor for national guard without first giving police a chance. He told them, he said, that he would ask for state protection if the police force failed.

The mayor said he was alarmed over the Alaska aspects of the strike situation. Tons of supplies and

food for cannery workers in the North lie on Seattle Wharves. [93]

"We're going to try moving cargoes for the next twenty-four hours under police guard," the mayor said. "We've got to keep the ships moving. There is too much at stake not only in Seattle but at other ports to tie up shipping.

"If things go all right tomorrow, we'll leave the police in charge. But if we have any more outbreaks such as that Saturday, we'll have no alternative but to ask Governor Martin to send in the national guard. Steps may be taken to request the President to send federal troops at the same time.

"There are about eleven ships a day moving in and out of Seattle. Shipping is good. If tying up the harbor meant only loss of business to Seattle, it would be bad enough. But a few days' delay may mean disaster for the whole of Alaska. Canneries up there are just getting under way and depending on ships from this port to bring supplies.

"We simply can't afford to tie up shipping. Cargoes are going to be moved out of here if we have to call on the army to help us do it."

The mayor said he did not believe that communists were responsible for the violence along the waterfront Saturday.

"The strikers themselves were responsible," he declared.

Only one incident of violence was reported yesterday on the waterfront.

Joseph H. Ryon, 3015 23d Ave. W., was taken to King County Hospital with an ankle fracture and

lacerations after he is said to have been beaten by strikers at E. Marginal Way and Stacy St. Ryan told police that he was not a party in any way to the waterfront controversy, but that some of the strikers took umbrage at remarks he made and attacked him.

Dewey G. Bennett, secretary of the Seattle local of the International Longshoremen's Association, said yesterday, he was "not surprised" at the decision of the waterfront operators and the mayor's announcement.

"We really haven't anything to say," he declared, "Except perhaps, that our attitude will be one of peaceful resistance. We don't expect to engage in any controversies with police."

"I wouldn't put it past him," Bennett said when informed that Mayor Dore said that steps might be taken to provoke federal intervention through the national army.

Bennett said he rather looked to see the strike settled the first of this week" at San Francisco and Los Angeles, which he said would probably mean the immediate return of men to work locally.

"It's union recognition or nothing—that's the purpose of the strike," he said.

The waterfront yesterday had an abandoned appearance. Guards lolled about the docks and ships, crews hung idly about. Ships officers lay about their quarters.

Strikers maintained an automobile patrol and headquarters of the International Longshoremen's

Association was kept posted on arrivals, departures and activity along the waterfront from Smith Cove to Duwamish Head. [94]

THE SEATTLE DAILY TIMES, May 15, #6, 1934, Page 1, Col. 8. C.L.S.

FISHER AND OTHER MILLS CLOSED BY PIER STRIKES

Coast State Executives Will Not Call Out Troops, But Seed Federal Mediation to Prevent Business Paralysis.

Highlights of the longshoremen's strike today were:

GOV. CLARENCE D. MARTIN OF WASHINGTON AND GOV. JULIUS L. MEIER OF OREGON, REFUSING REQUESTS OF THE MAYORS OF SEATTLE AND PORTLAND FOR TROOPS TO END THE PARALYSIS GRIPPING OCEAN SHIPPING, JOINED GOV. JAMES ROLPH, JT., OF CALIFORNIA, IN PLEAS TO THE PRESIDENT AND THE NATIONAL LABOR BOARD TO BRING ABOUT A TRUCE.

THE STRIKE CLOSED THE FISHER FLOURING MILLS IN SEATTLE, THROWING 300 MEN OUT OF WORK. TACOMA FLOURING MILLS AND LUMBER PLANTS ALSO ARE AFFECTED IN LESSER DEGREES.

ALASKA MAILS WERE HELD UP TODAY FOR THE FIRST TIME.

UNION MARINE FIREMEN AND SAILORS IN SEATTLE ALSO STRUCK TODAY.

THE PORTLAND CENTRAL LABOR COUNCIL VOTED A GENERAL STRIKE IF MEIER CALLED OUT THE NATIONAL GUARD. SAN FRANCISCO LOCALS OF THE MACHINISTS' UNION AND THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, WELDERS AND HELPERS VOTED TO SUPPORT THE LONGSHOREMEN WITH A SYMPATHETIC STRIKE.

UNION TEAMSTERS AND TRUCK DRIVERS OF SEATTLE, SEEKING TO FORCE ARBITRATION OF THE LONGSHORE STRIKE, SYMPATHETICALLY VOTED TO REFUSE TO TRANSPORT COMMODITIES TO OR FROM THE DOCKS. THEY HAD TAKEN SIMILAR ACTION LAST WEEK, AND THEN RECONSIDERED THEIR ACTION UNTIL A TEST WAS MADE YESTERDAY AND THE DRIVERS INDICATED THEIR UNWILLINGNESS TO DRIVE THROUGH THE STRIKERS' PICKET LINES IN RAILROAD AVENUE.

ONE STRIKER WAS KILLED AND TWENTY-ONE PERSONS WOUNDED IN A WILMINGTON, CALIF., RIOT. FIVE STEVEDORES WERE WOUNDED BY PISTOL AND RIFLE FIRE LEVELED ON A PICKET GROUP BY THE ARMED GUARD OF A DOCKING VESSEL AT HOUSTON, TEX.

Meanwhile, shipping stagnated, business paralysis gripped West coast ports, and employers and longshoremen were at an impasse, determined to give no quarter.

THE BELLINGHAM HERALD, May 15, 1934 —Page 1, Col. 2 H.R.

COURDEROY NAMED

War Veteran Appointed Acting Postmaster at Blaine.

WALTER V. COURDEROY, who served overseas as a sergeant IN THE *188th* AERO SQUADRON for Uncle Sam, was preparing Tuesday to take over management of the Blaine postoffice, after having been notified Monday afternoon by Congressman Mons C. Wallgren of his appointment as acting postmaster of Blaine. Courderoy's permanent appointment, friends who urged his selection for the place believe, will follow shortly.

Courderoy IS A NATIVE son of BLAINE, HAVING BEEN BORN *in the Peace Arch City* ON MARCH 2, 1895. He received his schooling in Blaine and is a charter member of Peace Arch Post No. 86 of the American Legion. He was married in 1919. Mrs. Courderoy being THE FORMER GLADYS BRUNS, ELDEST DAUGHTER OF MR. AND MRS. E. H. BRUNS, BIRCH BAY PIONEERS.

Courderoy's step-father, T. J. Quirt, was postmaster of Blaine under President Wilson. The new

postmaster *has* BEEN AN AUTOMOBILE DEALER *at Blaine* SINCE 1914, taking time out only to go to France.

Blaine's RETIRING POSTMASTER IS GEORGE D. MONTFORT, Republican, who has FILLED THAT POSITION about TWELVE YEARS. [95]

THE SEATTLE DAILY TIMES, #6, May 17, 1934 — Page 1, Col. 7. C.L.S.

TRAFFIC REMAINS AT STANDSTILL;
More INDUSTRIES CLOSED

Loading of Alaska Liner to Relieve Food Shortage in North Only Activity on Seattle Front; Crews Desert Tankers; Ships Weigh Anchor to Keep Clear of Strikers

STRIKING CREWS DESERTED TWO TANKERS HERE; MASTER OF SEVERAL OTHER vessels sailed, with Seattle cargoes still aboard, to keep their disaffected crews FROM CONTACT WITH STRIKE AGITATORS.

HIGHLIGHTS IN THE waterfront STRIKE:

LOADED BY STRIKERS TO ALLEVIATE ALASKA FOOD SHORTAGE, ALASKA STEAMSHIP COMPANY'S VICTORIA WILL SAIL NORTH AT MIDNIGHT.

ALL FACTIONS LOOKED TO FEDERAL LABOR BOARD MEDIATION EFFORTS IN SAN FRANCISCO TODAY.

A SUGAR SHORTAGE SENT STRAW-

BERRY PRICES DOWN. PORTLAND STRIKERS PERMITTED DISTRIBUTION OF 14,000 BAGS OF SUGAR TO RELIEVE ACUTE SHORTAGE AT OREGON FRUIT CANNERIES.

SHIPPING WAS AT A VIRTUAL STANDSTILL FROM SAN DIEGO TO BELLINGHAM; 300 POLICE GUARDED SAN FRANCISCO'S EMBARCADERO AS SPORADIC OUTBREAKS OCCURRED.

TWO MORE PUGET SOUND LUMBER MILLS CLOSED, BRINGING UP TO 8,154 WASHINGTON-OREGON TOTAL OF NONSTRIKERS FORCED INTO IDLENESS.

While three gangs of longshoremen, under an agreement with the Alaska Steamship Company to allow food supplies to move to Alaska today were loading the steamship Victoria at Pier 2, the steamship Alaska, which arrived from the North this morning, was idle at the same terminal. Two carloads of fresh fish, the passengers' baggage and 200 tons of other cargo were left aboard the Alaska while the Alaska Steamship Company was seeking a way to discharge it.

"We have no men to discharge the Alaska and the cargo will have to remain aboard," said Fred B. Tracy, agent for the company.

"We are allowing our men to work just one ship, the Victoria, and we will not touch the Alaska," said Dewey Bennett, local secretary of the International Longshoremen's Association.

Asked if the union would allow the fresh fish to be discharged, Bennett said: "No cargo comes off the Alaska. They were crying about the people in Alaska starving and we gave them permission to load foodstuffs, but they are loading wire netting and other cannery supplies. They can't eat wire netting.

All factions awaited the scheduled arrival at San Francisco today of Edward F. McGrady, assistant secretary of Labor, who will attempt to mediate the strike differences through the National Labor Board.

There was an exodus of ships which have been tied up in Seattle unable to work cargo.

The Steel Maker sailed for San Francisco and the Steel Mariner for Hawaii with cargo for Seattle still in their holds.

The Heian Maru, laden with Oriental shipments for this port, left for Vancouver, B.C.

The Columbian and Willzipo went to an anchorage at Port Townsend with Seattle cargo still aboard. The North King left for Bellingham to tie up.

The oil tankers M. H. Whittier and Brandywine, deserted yesterday by their crews, were still idle in Seattle today. The men left the two tankers after they were visited by a delegation from the Seamen's Union. [96]

Moving vessels out of port served to keep crews from contact with strike agitators.

Meanwhile, the Associated Press reported the closing today of the Grange Lumber Company, Ta-

coma, with forty-five employes, and THE CLEAR FIR LUMBER COMPANY, TACOMA, WITH 295 MEN, BECAUSE OF INABILITY TO SHIP WATER-BORNE ORDERS. The dispatch said THE NALLEY'S FOOD PRODUCTS FACTORY WILL CLOSE TOMORROW BECAUSE OF A SHORTAGE OF WATER-SHIPPED GLASS CONTAINERS.

SIX VESSELS WERE TIED UP IN TACOMA BY THE STRIKE.

THE MATSON NAVIGATION COMPANY, OPERATING A *FELLT* OF FIVE SHIPS FROM NORTHWEST PORTS TO HAWAII, ANNOUNCED THAT IT HAD SUSPENDED ALL OPERATIONS.

IN A LETTER TO NORTHWEST SHIPPERS, THE COMPANY SAID THEY WOULD NOT ATTEMPT TO LOAD ANY OF THEIR SHIPS IN THE NORTHWEST UNTIL THEIR EMPLOYES ARE GIVEN "PROPER PROTECTION BY THE AUTHORITIES."

The steamship Manini, which was dispatched from Portland yesterday for Hawaii with a part cargo of lumber, will be the last ship loaded. The vessel left 500,000 feet of lumber booked for her at two mills.

W. D. Vanderbilt, Seattle manager for the Grace Line, wrote the Chamber of Commerce that:

"I very much regret to inform you that because we have been unable to secure assurance from municipal or state authorities that proper protection would be provided, it has been necessary to cancel

the sailing of the Santa Elena, scheduled from San Francisco Thursday, May 17, and all further sailings north of San Francisco will be discontinued until we are given necessary protection in working our ships.

The Alaska Steamship Company, the Pacific Lighterage Company and the Waterfront Employers of Seattle addressed a telegram to Governor Martin stating they have at all times been ready to negotiate with their striking employes' representatives, provided labor representatives were elected in accordance with the collective bargaining provisions of N. R. A.

This same policy was announced to the governor of Oregon and Mayor of Portland yesterday, but the Oregon longshoremen retorted that they wanted their own union representatives to sit for them, not men whom the strikers termed "company representatives."

"This is the first break in our service since starting on December 20, 1932, and it is a matter of great disappointment to us that we have been forced to this decision. We hope the efforts of the chamber and of the people of Seattle and the Northwest to bring about order on the waterfront will enable us at an early date to resume the service.

"All scheduled sailings from San Francisco to Central America and New York will be maintained, as we are able to work cargo under reasonably satisfactory conditions at both San Francisco and Los Angeles where proper police protection is given."

Meanwhile, Mayor John F. Dore, and Governor

Clarence D. Martin were being bombarded with appeals to end the strike. Business and agricultural groups, the Associated Press reported, are warning the governor that the state's important apple crop is threatened with destruction through lack of spray materials which are held up by the strike.

Formal notice of the longshoremen's agreement to load the Victoria was given by Dave Back, teamsters' union international representative, spokesmen for organized labor at Gov. Clarence D. Martin's strike conference. It was confirmed by the International Longshoremen's Association, whose 2,000 Seattle members entered the second week of their walkout yesterday to force recognition of the union. [97]

The voluntary agreement to lift the strike from the Victoria was made at the governor's request and in answer to pleas from Alaska citizens dependent on Seattle for supplies, Beck said.

The agreement reads:

"Upon statement of government officials that Alaska is in danger of not being supplied with the necessities of commerce, the longshoremen's organization has unanimously agreed with its own men to load the Victoria of the Alaska Steamship Company's line in order that she may proceed immediately to Alaska to alleviate any possibility of any shortage of necessities of commerce at any northern ports."

The Alaska Steamship Company had contemplated sending its thirty carloads of Alaska supplies overland to San Francisco for shipment to Alaska. Mr. Wilson had said that unless the strike is set-

tled so far as the Alaska service is concerned, the Alaska fishing season would be ruined for want of cannery supplies from Seattle.

"That's just a grandstand gesture," commented Watson Barr, manager for the Interocean Steamship Corporation and Dyson Shipping Company, when apprised of the longshoremen's offer to load the Victoria. Mr. Barr was chairman of the shipping operators' committee that waited on the governor Tuesday.

"Paddy Morris of Tacoma, the spokesman for the I.L.A. at the governor's conference, refused to yield one iota when Mr. Wilson made his plea on behalf of getting supplies moving to Alaska.

"Morris said that they would not yield at all; that the longshoremen would stand together, from San Diego to Seattle, for recognition of their union in all ports and on all lines. And that is directly against the N. R. A. provisions."

Fear that business stagnation in Northwest ports as a result of the waterfront strike will let California seize the Seattle, Tacoma and Portland trade with Alaska and the Orient was expressed as resentment spread over inability to move cargoes and ships from Washington and Oregon ports.

In California ships and cargoes were moving, although not always on schedule; strikebreakers worked under protection of police and company armed guards. There was some bloodshed there Tuesday, as a result, but trade channels were kept open, while in the Northwest steamship companies, forced to cancel all sailings were threatening to move their businesses to San Francisco.

The Luckenbach Steamship Company advised Gov. Clarence D. Martin that unless protection is furnished shortly, it will have to discontinue its Seattle business. This would mean a loss to this port of $800,000 annually.

The stagnation was spreading inland many hundreds of miles, and businesses depending largely on waterborne commerce for raw materials and shipment of their products were chafing as they laid off thousands of men through inability to ship orders.

Meanwhile the strike went into its second week with all sides looking to N. R. A. Labor Board mediation at San Francisco as the most probable solution of the chaos.

Charles W. Hope, executive secretary of the Seattle Federal Regional Labor Board, announced a long distance message from Charles A. Reynolds, regional chairman, dispatched to San Francisco to mediate coastwise longshoremen's strike issues, was that the longshoremen generally are more receptive to arbitration than are the employers and that mediation will start as soon as the employers have made some working proposition to the strikers. [98]

THE SEATTLE DAILY TIMES, #6, May 17, 1934 — Page 15, Col. 4. CL. S.

ALASKA CARGOES SHOW INCREASE OF 87 PERCENT.

SHIPMENTS TO ALASKA FROM ports in THE WASHINGTON CUSTOMS DISTRICT DURING THE FIRST FOUR MONTHS OF L(#$ INCREASED 87 PERCENT COMPARED

WITH THE SAME PERIOD LAST YEAR, THE MARINE DIVISION OF THE UNITED STATES CUSTOMS SERVICE ANNOUNCED TODAY.

DURING THE FIRST FOUR MONTHS OF 1934, SHIPMENTS AMOUNTED TO $5,910,123. Total shipments for the same period of 1933 were $3,161,243.

The gain of $2,748,880 in Alaskan commence resulted from increased mining and canning operations and more general trade, according to Oscar W. Dam, deputy collector of customs in charge of the Marine Division of the customs service.

"The advance in the price paid by the government for gold to $35 an ounce, which occurred since the first quarter of last year, is a large factor in the increase in shipping," Mr. Dam said. "Many mines have opened this year."

An increase in the number of canneries operating in Alaska was cited by the Alaska Steamship Company as another reason for increased shipments.

Officials in the customs department expect the increase to continue during the rest of the year.

The following table is a comparison of shipments for the first four months of 1934 and 1933:

	1934	1933
January	$ 792,019	$ 591,677
February	838,419	497,761
March	1,522,020	822,311
April	2,757,665	1,240,494
TOTALS	$5,910,123	$3,161,243

THE BELLINGHAM HERALD, May 17, 1934
A. M., Page 3, Col. 5. C. L. S.

PERFORMER FALLS

Wire Artist Hurtles Twenty Feet Through Air

An unexpected thrill was furnished the audience at the *Elks indoor circus* AT THE STATE STREET AUDITORIUM *Wednesday* N I G H T, when FRANK McMAHON, SLACK WIRE ARTIST, LOST HIS BALANCE AND hurtled through the air TWENTY FEET, landing AT THE FEET OF A GROUP OF SPECTATORS. UNCONSCIOUS FOR TEN MINUTES, the performer was revived and *taken to his hotel room. He refused to allow friends to take him to a hospital.* AS FAR AS IT COULD BE LEARNED he suffered a badly lacerated face.

Circus officials were unable to explain the accident. The consensus was that McMahon lost his balance in going into his whirlwind swing he uses as a finish for his act and fell. [99]

THE SEATTLE DAILY TIMES, #6, May 18, 1934, Page 1, Col. 8. H. R.

27,600 OUT OF WORK AS RESULT OF MARINE ROW

In Addition to Stagnation of Industrial Plants and Shipping, Thousands of Farmers Suffer Losses

General business paralysis, centered in Washing-

ton and Oregon industries which are DEPENDENT ON WATERBORNE COMMERCE, CONTINUED TO SPREAD TODAY, WHILE ALL FACTIONS LOOKED TO LABOR BOARD MEDIATION EFFORTS AT SAN FRANCISCO TO BRING ABOUT A TRUCE.

PEACE WOULD MEAN RESUMPTION OF WORK BY THE COAST'S 12,000 STRIKING LONGSHOREMEN, NEARLY 7,000 MARINE FIREMEN AND SEAMEN, AND SEVERAL THOUSAND MORE WHO HAVE WALKED OUT IN SYMPATHY OR, BECAUSE OF UNION MEMBERSHIPS, ARE REFUSING TO HANDLE GOODS WHICH CONFLICT WITH THE DOCK WORKERS' INTERESTS.

Press Association DISPATCHES RAISED TO 8,604 THE TOTAL PERSONS THROWN OUT OF EMPLOYMENT BY INDUSTRIES CLOSING DOWN IN THE NORTHWEST, DUE TO INABILITY TO OBTAIN RAW MATERIALS OR SHIP PRODUCTS. THESE WERE MOSTLY LUMBER MILL AND FLOURING MILL WROKERS, BUT INCLUDED A SCATTERING OF MANY OTHER EMPLOYES OF MAJOR WASHINGTON AND OREGON INDUSTRIES.

THE FIGURE TOOK NO ACCOUNT OF THE THOUSANDS OF FARMERS—FRUIT GROWERS AND WHEAT RANCHERS, HUNDREDS OF MILES FROM TIDEWATER—WHO FACE RUIN THROUGH LOSS OF MARKET AND HELPLESS INABILITY TO DO ANYTHING ABOUT IT.

IT TOOK NO ACCOUNT OF THE FISHERIES INDUSTRIES IN NORTHERN WATERS, WHICH MUST HAVE CANNERYMEN AND SUPPLIES STARTING NORTH THIS WEEK OR FACE SIMILAR LOSS DURING THE SHORT FISHING SEASON.

AND IT DID NOT INCLUDE THE FAMILIES OF THE STRIKERS THEMSELVES, NOW DEPENDENT ON STRIKE FUNDS FOR EXISTENCE UNTIL ONE SIDE OF THE OTHER GIVES IN OR THE FEDERAL MEDIATORS, WORKING BEHIND CLOSED DOORS IN SAN FRANCISCO, ARE ABLE TO BRING ABOUT A SETTLEMENT.

COMPARATIVE FIGURES TODAY SHOWED THAT THE STRIKE IS INEFFECTIVE IN CALIFORNIA PORTS, AS COMPARED WITH CONDITIONS IN SEATTLE, TACOMA AND PORTLAND. CALIFORNIA SHIPPING HAS BEEN RETARDED, BUT CARGOES ARE MOVING UNDER POLICE PROTECTION.

The Associated Press at Los Angeles, for example, reported today that since the strike started May 9 only four ships have been tied up in the ports of San Pedro, Wilmington (Los Angeles Harbor) and Long Beach. During that period, ninety-four vessels have entered those ports and eighty-three have departed.

During the same period, however, SEATTLE HARBOR DEPARTMENT RECORDS SHOW, THERE HAVE BEEN THIRTY-EIGHT AR-

RIVALS HERE AND THIRTY SAILINGS, WITH TWENTY.THREE VESSELS TIED UP UNABLE TO DISCHARGE OR LOAD CARGO.

Six ships have called and departed without discharging their Seattle cargo.

Sixteen ships lay here today awaiting settlement of the longshore strike to unload Seattle cargo or unable to move because they have been deserted by their striking crews. Seven Seattle ships lay at moorings today, scheduled to sail, but unable to load cargo.

Seattle cargo movement was confined to one terminal, where the Alaska Steamship Company's liner Victoria was loading for Alaska as a result of voluntary action by the workers. She will sail today, bound for Southeastern Alaska ports. She had been slated to sail last midnight, but could not be loaded in time.

The tie-up is exacting a toll of millions of dollars, representing lifelihood to employes in addition to losses in earnings [100] of steamship companies and kindred organizations.

Thirty-five deep-ships were idle in Seattle harbor today although there were a few movements late yesterday and last night.

The tankers W. S. Miller and Warwick arrived from California and the motorship Northland of the Northland Transportation Company came in from Southern Alaska with passengers and freight.

The Danish motorship Europa and the British

steamship Narenta sailed for Europe and the United Kingdom.

Three gangs of longshoremen, between sixty and seventy men, were loading the Victoria at Pier 2. The men were being paid the pre-strike scale, 85 cents an hour straight time and $1.25 over time. They were working in six-hour shifts.

Dewey Bennett, secretary of the Seattle local of the International Longshoremen's Association, said the earnings will be donated to the strike fund.

Bennett said strike benefits are being given to all strikers in need of such assistance. Married men are given $1 a day in cash and single men get meal tickets, good at three restaurants designated by the union.

The steamship Alaska was idle at Pier 2 with all the cargo she brought yesterday from Alaska still aboard. Only mail and baggage were put ashore.

Meanwhile the Matson Line has announced it will transfer its purchases of supplies from Seattle to California cities. This means a loss to Seattle of $75,000 to $100,000 a month.

The Luchenbach Line has announced it will transfer its business to California, too, a loss to Seattle of about $800,000 a year.

The Grace Line has canceled all sailings north of San Francisco until adequate protection is afforded cargo movements here.

Edward F. McGrady, assistant secretary of labor, today directed the second day's session of the federal mediation board in San Francisco. The

Associated Press said that officials of the I. L. A., declared that their demands for union recognition, a 30-hour instead of a 48-hour week, and higher wages must be granted before the strike ends.

McGrady said he knew he faced a hard task, but told both sides that "no strike is so bad that it cannot be settled."

Though no official reports came from the mediation conference, longshore leaders intimated to the Associated Press that the first point in importance, from their viewpoint, is recognition of the I. L. A. as a coastwide unit.

This angle is something new in strikes, a solidarity of union members from one end of the Coast to the other, a joining of issues with allied craftsmen and a refusal of such union men as truckers and teamsters to handle cargo affected by the waterfront strike.

Threats of a general strike were reported yesterday from Tacoma and Portland Central Labor Councils, if troops are called out, but Seattle labor leaders said no such action is contemplated here.

[101]

THE SEATTLE DAILY TIMES, #6, May 21, 1934 — Page 1, Col. 7. H. R.

JOHN S. DONLAN, POLICE VETERAN, SLAIN IN HOME

Detectives Work on Theory That Intruder in Home Recognized Sergeant and Shot to Hide Identity

POLICE SERGT. JOHN SYLVESTER DON-

LAN, VETERAN OF THE SEATTLE FORCE, WAS SHOT TO DEATH LAST EVENING IN HIS HOME AT 346 KINNEAR PLACE. HIS FELLOW OFFICERS, INVESTIGATING THE MURDER TODAY, WORKED ON THE THEORY THAT THE FATAL SHOTS WERE FIRED BY A BURGLAR, PERHAPS ONE WHOM SERGEANT DONLAN HAD ARRESTED.

DETECTIVE LIEUT. J. E. WARNER SAID IT WAS POSSIBLE THAT A BURGLAR, NOT KNOWING WHOSE HOUSE HE HAD BROKEN INTO, REALIZED WHEN HE ENCOUNTERED DONLAN THAT HE HAD BEEN RECOGNIZED AND KNEW HE MUST KILL DONLAN TO KEEP HIS IDENTITY SECRET.

Donlan was shot twice as he apparently ran toward a closet for his pistol, after hearing or seeing a man who had broken in a basement window.

Donlan's daughter, Lillian, 26 years old, stumbled over his body as she and her mother arrived home last night from a trip to visit friends near Chehalis.

Sergeant Donlan was 64 years old and had served on the Seattle police force nearly thirty years.

The theory that a burglar did the killing was supported by the fact that the house of Harry C. Rowles insurance man, 354 Kinnear Place, next door to the Donlan home, was looted between 2:30 and 6:30 o'clock yesterday afternoon.

Only 73 cents, taken from a purse, was missing

from the Rowles home. Nothing had been taken from Dolan's house.

Dr. W. H. Corson, chief deputy coroner, said Donlan apparently died between 5 and 6 o'clock —while still it was daylight.

The slayer fired three shots. One struck the fireplace. One broke Donlan's arm. The third hit him in the heart, killing him instantly.

The veteran officer apparently was killed ruthlessly, investigators finding no evidence of a fight. There were no powder marks on Donlan's clothing, indicating he was shot from several feet away.

Detective Chief Luke S. May, Capt. William E. Justus and Lieut. F. L. Marshall worked with Warner and Dr. Corson in investigating the tragedy.

They said Donlan, wearing slippers and lounging clothes, apparently was sitting in his favorite chair by a front window, reading Sunday newspapers and working cross word puzzles. A half-finished puzzle was found by his chair.

The slayer entered a basement window and climber a stairway to the first floor, the officers believe. Donlan apparently heard the man in the hallway off the living room.

The closet containing Donlan's police pistol is in the hall, by the front door—the intruder being between Donlan and the closet.

The bullet that struck the fireplace apparently was fired from the hallway as Donlan entered the hall from the living room. The other bullets struck

him as he ran toward the closet. His body lay near the closet door, with the head toward the door.

A basement door on the side of the house was open. Police believe the slayer escaped there. The house had not been ransacked.

Mrs. Donlan and the daughter left the garage doors open when they departed in the afternoon.

Investigators believe the open doors led the burglar to believe no one was home. [102]

Donlan had lived in Seattle or vicinity since his parents moved to Issaquah from the East when he was 9 years old. He was born at Staten Island, N. Y.

He grew up in Issaquah, then moved to Seattle and operated a harness shop. He joined the Police Department June 15, 1904, and became a sergeant January 22, 1919. Donlan had been assigned to Ballard precinct recently.

THE BELLINGHAM HERALD, May 23, 1934—Page 1, Col. 2. H.R.

NO ATTEMPT TO WORK VESSELS IS MADE

Waterfront Employers Fail to Sign Non-Union Stevedores; Police Await Call.

HIRING HALLS ISSUE

Government Employment Service Suggested

SEATTLE, May 23,—(AP)—An attempt to open the port of Seattle with a police guard for non-union workers failed today when waterfront employers failed to employ them.

About 100 policemen lost several hours sleep by coming on duty at 7:30 a.m. instead of noon, called out to protect the barricaded gates of the Great Northern dock where the Japanese liner, Heian Maru, lies with cargo destined for Seattle still in her holds.

She is posted to sail for Kobe Friday with the cargo still aboard unless an effort is made to unload her between now and then.

Mayor John F. Dore announced yesterday police would ride trucks used to load or unload ships, but there were no attempts made to work the vessels.

Almost two hours after the policemen arrived, executives of the N. Y. K. line, owners of the Heian Maru, said no effort would be made to discharge the ship because they had been unable to get non-union stevedores together.

The test of strength was planned for the Nippon Ysen Kaisha vessel because, being manned by Japanese men and officers, she is not affected by the strike of American marine firemen and sailors.

REYNOLDS COMES NORTH

Charles A. Reynolds, chairman of the Seattle federal regional labor board, believed to be carrying an important message relative to the longshoremen's strike, was flying here today from San Francisco, where he has been sitting as one of the *federal mediators.*

Word of Reynolds' departure from the California city CAME THROUGH CHARLES W. HOPE, EXECUTIVE SECRETARY OF THE REGIONAL LABOR BOARD. REYNOLDS HAD AUTHORIZED HIM TO CALL A CONFERENCE EARLY THIS EVENING WITH LOCAL OFFICERS OF THE STRIKING INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, HOPE SAID, adding that "the fact that Mr. Reynolds is leaving the mediation conference on the eve of the arrival of Joseph P. Ryan, president of the I. L. A., from New York, INDICATES HE HAS SOMETHING DEFINITE. PROBABLY IT IS IN REGARD TO THE REOPENING OF ALASKA SHIPPING. [103]

THE SEATTLE DAILY TIMES No. 6, May 23, 1934, Page 1, Col. 8 H.R.

STRIKERS TO VOTE TODAY ON RELIEF FOR ALASKA

Test Loading Falls Through as Employers Do Not Get Nonunion Crew Together; Aid for Canneries Urged.

Mayor John F. Dore's second attempt to reopen the Port of Seattle with a police guard for strikebreakers failed today because the waterfront employers failed to employ any strikebreaking longshoremen.

All that happened was that 100 policemen lost several hours of sleep by coming on duty at 7:30

o'clock instead of at noon. They were called out to protect the barricaded gates of the Great Northern Dock where the Japanese liner, Heian Maru of the Nippon Yusen Kaisha lies with cargo destined for Seattle still in her hold.

The Heian Maru is posted to sail for Kobe Friday afternoon with that cargo still aboard unless an effort is made to unload her between now and then.

AT 9 O'CLOCK, AN HOUR AND A HALF AFTER THE 100 RESERVE POLICEMEN HAD REPORTED FOR DUTY, EXECUTIVES OF THE N. Y. M. ANNOUNCED NO EFFORT WOULD BE MADE TO DISCHARGE THE HEIAN MARU'S SEATTLE CARGO BECAUSE THEY HAD BEEN UNABLE TO GET THEIR STRIKEBREAKING STEVEDORES TOGETHER.

The test of police strength was planned for the Nippon Yusen Kaisha vessel because, being manned by Japanese men and officers, she is not affected by the strike of American marine firemen and sailors.

Last week, when Dore provided police to guard Pier 2 for the Alaska Steamship Company, the police test failed because union truck drivers showed no disposition to run the gauntlet of strike pickets with goods destined to behandled by strike breakers.

Thus the waterfront strike, paralyzing an enormous amount of Northwest industry outside ship-

ping and foreign trade, started its third week of stagnation on this coast today.

MEANTIME, by Associated Press CAME WORD THAT SOUTHERN CALIFORNIA PORTS WERE KEEPING OPEN BY WORKING NONUNION LONGSHOREMEN AND SHIPS' CREWS BEHIND POLICE LINES.

SHIPPING OPERATORS AND STEVEDORING COMPANY EXECUTIVES ARE SPENDING MONEY IN CALIFORNIA TO KEEP COMMERCE MOVING. FIVE HUNDRED UNIFORMED POLICE, RADIO OFFICERS AND DETECTIVES lined the Los Angeles harbor area last night and today, including a large detail for San Pedro.

THE ONLY VIOLENCE WAS A FIST FIGHT BETWEEN FOUR SEAMEN. Shipping moved slowly, the Associated Press reported from Los Angeles, but it moved. Ship operators there said no ships have been tied up by the strikes, because there is no lack of nonunion sailors. They said 1,236 nonunion longshoremen are moving cargo.

K. R. Watson, president of the Sailors' Union in Los Angeles admitted the Dollar Line Steamship President Jackson, was able to sign up 80 percent replacement and sail. The Matson-Oceanic Line was recruiting nonunion workers to man the Monterey which, union leaders said, lost every man of her crew by walkout yesterday.

Whether the waterfront strike ban will be lifted to save the Bristol Bay salmon canning industry, worth many thousands of dollars to Seattle, will be

decided by striking longshoremen, marine firemen and seamen at a meeting in the longshoremen's hall late this afternoon. [104]

They will vote on acceptance or rejection of the recommendation of the International Longshoremen's negotiations committee at San Francisco yesterday, that they permit lading and dispatch of all Bristol Bay cannery supply ships. Otherwise the month long salmon season in that far-north cannery center will be ruined.

The ships affected are the Libby, McNeil & Libby supply ship Otsewo, now at the Pacific Coast Coal Bunkers, and the Pacific American Fisheries steamship North King, en route from its Bellingham headquarters to Seattle.

Longshoremen last night discussed the matter informally, but took no action, according to their secretary, Dewey G. Bennett, because even if they permitted the loading of supplies, the strike of seamen and firemen for higher wages, would prevent sailings. So it was decided to call the other affected unions into formal conference this afternoon.

Longshoremen here heartened in their policy of holding out for complete recognition on this coast today by an Associated Press report that their colleagues of the I. L. A. in New York won a victory in the controversy over whether stevedores employed by the Clyde-Mallory Line were in favor of or opposed to the union. In the plebiscite ordered by the N. R. A. Regional Labor Board all but 22 of the 434 votes were for the union.

The New York strike was called off last night when Franklin D. Mooney, president of the Atlantic Gulf and West Indies Steamship Lines, operating the Clyde-Mallory ships, said he would abide by the result of the vote.

In New York, Joseph P. Ryan, President of the I. L. A., said his next move would be for a 44-hour week instead of the present 48-hour week, for the eastern longshoremen.

Ryan leaves New York by airplane tonight to attend the federal mediation conferences of strikers and operators at San Francisco. The western I.L.A. is an autonomous body, but Ryan's influence with members of his craft will be relied on in truce efforts for this coast.

Meanwhile, the federal mediators at San Francisco, aided by Edward F. McGrady, assistant secretary of labor, sought desperately for a solution to the crisis on this Coast. Balked by the refusal of the employers to consider the I. L. A. Demand for recognition and the refusal of the strikers to recede from this demand, the negotiators submitted new compromises.

The latest compromise proposed that the federal government, the union and the employers jointly operate hiring halls for the employment of longshoremen. The union has asked for the sole right to operate these halls "in order to spread employment among our membership." Shipowners now hire the crews directly.

Neither side intimated its reaction to the pro-

posal. An answer was to be submitted to the mediation committee today.

The Associated Press at San Francisco said authorization to Seattle strikers to permit loading and sailing of Bristol Bay cannery supply craft came from a longshoremen's negotiations committee which includes J. C. Bjorklund, Tacoma; William J. Lewis, district president; J. J. Finnegan, San Francisco, and A. H. Peterson, San Pedro.

It was received here in a long distance telephone message to the longshoremen's headquarters. McGrady followed it with a request that the ships be released immediately.

Meanwhile, the only recent cargo movement here was under guard of Sergt. George W. Wilson and a detail of policemen yesterday afternoon when the officers of the steamship Alaska discharged thirty-nine boxes of iced shrimps consigned here.

[105]

The remainder of the fresh fish cargoes aboard the Alaska, now in drydock and aboard the steamship Northwestern, totaling 173 cases of halibut and trout, remain in the holds, spoiling because they cannot be discharged or re-iced.

The only recent sailing was at 4 o'clock this morning when the Coast Guard patrol boat Morris left for her new station, recently opened at Seward, Alaska. She carried some mail, and had Dr. Ales Hrdlicka, anthropologist, and his party aboard, en route to Kodiak Island for summer explorations.

Government craft are not affected by the strike.

In his effort to reopen this port to private shipping, Mayor Dore yesterday indignantly defied McGrady's efforts to have him call off police and leave the port closed.

"Of course they are trying to stop us," Mayor Dore commented. "They know that if Seattle is opened up, the longshoremen's strike is broken. The longshoremen are licked now.

"Los Angeles is 100 percent open to commerce; San Francisco is half open. They are raising a million dollars in San Francisco to break the strike and already they have put up $100,000 in Oakland.

"Who is this man McGrady, that he should be trying to run out business for us?" Dore continued. "As far as I can learn he has never done anything constructive.

"If he thinks we are going to sit by here, while he sits around the table for thirty days, he's mistaken.

"We're not going to lose our flour business, paralyze our fishing—one of our greatest industries—and keep thousands of men out of work, just to make things easier for him." [106]

THE SEATTLE TIMES, No. 6, May 30, 1934.
Page 1, Col. 3 H. R.

4 MORE SEATTLE PERSONS KILLED IN AUTO MISHAPS.

Automobile accidents took the lives of four more Seattle persons LAST NIGHT IN ADDITION TO ONE KILLED EARLY YESTERDAY.

A young woman and two children were killed near Easton when the Automobile in which they were riding on a holiday excursion crashed into a truck. Other mishaps in Seattle and Renton took the lives of two men.

MISS GEORGIA McDANIELS, 22 YEARS OLD, 110 W. 70th ST., MARIE LANGSETH, 4, of 7009 Second Ave. N.W., AND HER SISTER ANNA MAY LANGSETH, 2, WERE KILLED IN THE ACCIDENT LAST NIGHT NEAR EASTON.

MARTIN C. LANGSETH, 34, DRIVER OF THE CAR, AND HIS WIFE ESCAPED DEATH BUT WERE TAKEN TO A HOSPITAL AT CLE ELUM WITH BROKEN BONES.. LANGSETH SUSTAINED A FRACTURED ANKLE; HIS WIFE A BROKEN COLLAR BONE.

According to an Associated Press dispatch, the LANGSETH CAR HIT A HEMRICH BREWING COMPANY TRUCK ON THE SUNSET HIGHWAY.

Ambrose A. Collins, 74, mortician, who lived at 910 E. Mercer St., died on the way to Harborview County Hospital after his automobile hit a bulkhead at Harvard Avenue and Seneca Street last night.

Bystanders said Mr. Collins' car missed the turn on Seneca Street and hit the rock wall with such force that many believed the gasoline tank had exploded.

Alfred Prato, 38, 843 Cloverdale St., was fatally injured yesterday on the Sunset Highway four

miles east of Renton, when his truck overturned. He apparently went to sleep while driving, State Patrolman Earl Henry said.

Mrs. C. H. Fagen, 9552 19th Ave., N.E., was taken to Harborview County Hospital with back injuries after she was pinned under a car driven by her husband after an accident at 118th Avenue Northeast and East 77th Street last night.

According to police reports, the Fagen car collided with an automobile driven by H. G. Starr, 33, of Arlington, Mrs. Starr, Mr. Fagen, and Mrs. H. W. DeLisle, 1802 1. 80th St., a passenger in the Fagan automobile, were bruised and shaken.

C. H. Peterson, 50, a dairyman, was booked on a charge of reckless driving after his arrest at 2309 N. 50th St. last night. The Peterson car was reported by police to have struck Miss Elene Myhre, 1882 24th Ave. N., at the corner of East 45th Street and Brooklyn Avenue.

Bystanders who saw the accident, in which Miss Myhre was severely bruised, reported the license number of the automobile. Peterson was in the city jail in lieu of $50 bail today. [107]

THE SEATTLE DAILY TIMES No. 6, May 31, 1934. Page 1, Col. 6 C.L.S.

TWO WOMEN TRY TO END LIVES BUT ARE FOILED

Two young women were saved from suicide last night, Mrs. Juanita Anderson, 26 years old, being

rescued as she tried to strangle herself in the city jail and MISS TOMMIE A. LOW, 21, BEING HALTED AS SHE TRIED TO LEAP INTO ELLIOTT BAY FROM PIER 6, FOOT OF UNIVERSITY STREET.

MRS. ANDERSON TIED A SCARF AROUND HER THROAT AND ATTACHED IT TO HER JAIL COT. SHE WAS UNCONSCIOUS WHEN ANOTHER PRISONER SAW HER AND SUMMONED A MATRON. MRS. ANDERSON WAS REVIVED AND PLACED UNDER GUARD IN CITY HOSPITAL WHEN SHE THREATENED TO TRY AGAIN TO KILL HERSELF.

AN UNIDENTIFIED MAN SEIZED MISS LOW AS SHE WAS CLIMBING OVER THE DOCK RAILING. A WOMAN AND TWO MEN ONE OF WHOM MISS LOW DESCRIBED AS HER FIANCE, WERE HELD FOR QUESTIONING AFTER SHE SAID SHE TRIED TO END HER LIFE FOLLOWING A QUARREL WITH THEM.

Mrs. Anderson, employed as a domestic at a Westlake Avenue North home, was arrested there last evening with J. McClelland, 65 years old, a laborer, after a dispute over McClelland's money.

Mrs. Anderson said McClelland, a guest of her employer, had been drinking and tried to throw his money away. She picked it up and gave it to a neighbor for safekeeping, she said, but McClelland later accused her of stealing it. Police said the neighbor had $260 belonging to McClelland.

Asked why she tried suicide, Mrs. Anderson said she did not like being in jail and was tired of working. She said she and her husband, her second spouse, are estranged. She divorced the first at Reno, she said.

THE SEATTLE DAILY TIMES, No. 6, May 31, 1934—Page 1, Col. 3. C.L.S.

SEATTLE VETOES STRIKE PEACE; FERRIES RESUME.

Major developments in the coastwide shipping strikes today included:

Executive committees of maritime trade unions convene here to ORGANIZE PACIFIC COAST WATERFRONT FEDERATION, TO DRAFT AND ENFORCE FUTURE WORKING POLICIES AND DEMANDS, COMBINING SHORE AND SEAFARING WORKERS.

PUGET SOUND NAVIGATION COMPANY MEETS STRIKING FERRYBOATMEN'S DEMANDS FOR TWELVE-HOUR DAY, SIX-DAY WEEK, WITH NO WAGE CUTS; WALKOUT ENDS AND FERRIES RESUME REGULAR SCHEDULES.

VOTING VOCALLY, 1,300 SEATTLE AND 246 EVERETT LONGSHOREMEN UNANIMOUSLY REJECT EMPLOYERS' TRUCE PROPOSAL. LOS ANGELES HARBOR LOCAL REPORTS SIMILAR VIVA VOCE RE-

JECTION AFTER TACOMA'S LEAD IN BALLOTING AGAINST ACCEPTANCE. PORTLAND AND OTHER COAST PORTS, PREPARING TO VOTE TODAY, FORECAST OVERWHELMING REJECTION.

FEDERAL STRIKE MEDIATORS AT SAN FRANCISCO AWAIT FORMAL REPORT OR REJECTION BEFORE DECIDING COURSE.

TWENTY FOUR INJURED IN SAN FRANCISCO STREET RIOTS LAID TO YOUNG COMMUNISTS.

SEATTLE SHIP MOVEMENTS: NORTHL A N D TRANSPORTATION COMPANY'S NORTH WIND, LOADED AND MANNED BY STRIKERS, SAILED LAST MIDNIGHT FOR ALASKA PORTS WITH FOOD AND OTHER NECESSITIES. NO ARRIVALS. [108]

THE SEATTLE DAILY TIMES, #6, June 1, 1934 — Page 1, Col. 8. H. R.

LIGHT SEDAN RAMS TRUCK
IS SET AFIRE NEAR TACOMA

Terrific Impact of Collision Heard Quarter Mile; Two Women Hurt; Driver of Fatal Auto May Die

ONE MAN WAS KILLED AND TWO WOMEN AND A MAN WERE INJURED SERIOUSLY WHEN THEIR LIGHT S E D A N RAMMED THE REAR OF A LOADED BRICK

TRUCK A N D CAUGHT FIRE AT 2:35 O'CLOCK THIS MORNING IN THE SEATTLE-TACOMA HIGHWAY, ABOUT TWO MILES NORTH OF TACOMA.

THE DEAD: EARL CHARLES COOTE, 29-YEAR-OLD SAN FRANCISCO NEWSPAPER PRESSMAN, KILLED.

THE INJURED: MRS. IRENE COOTE, 26 YEARS OLD, THE DEAD MAN'S WIDOW, LEG FRACTURED AND SKULL INJURED.

MRS. LUCILLE ELLIOTT, 19 OF TACOMA, NUMEROUS TEETH KNOCKED OUT, FACE CUT, SHOULDER PROBABLY BROKEN.

ARCHER HARDER, 23, OF TACOMA, SKULL FRACTURED AND LEGS SEVERELY BURNED; MAY DIE.

STATE PATROLMAN V I C PIGG SAID HARDER APPARENTLY WAS DRIVING THE SEDAN.

THE TRUCK, BELONGING TO THE SEATTLE BRICK & TILE COMPANY AND DRIVEN BY L. P. SACCO, 29, OF 215 PONTIUS AVE., WAS STANDING PARTLY IN THE HIGHWAY, PIGG SAID. SACCO HAD STOPPED TO AID A MOTORIST.

PIGG SAID THE FIRE WAS SO HOT THAT SILVER COINS IN HARDER'S POCKET W E R E PARTLY MELTED. ALTHOUGH HARDER WAS BURNED SEVERELY, PIGG SAID, IT WAS ALMOST MIRACULOUS THAT

ALL THE SURVIVORS WERE NOT BURNED TO DEATH.

COOTE'S BODY WAS PARTLY BURNED. THE WOMEN ESCAPED WITH MINOR BURNS WHEN BYSTANDERS DRAGGED THEM FROM THE WRECKAGE.

The impact was heard a quarter of a mile away and the blaze attracted motorists from nearby roads. The accident occurred about a quarter of a mile north of the junction of the Fife road and the Pacific highway. Both machines were traveling south.

The sedan was traveling at such speed that the truck, loaded, with bricks and its brakes set was knocked fifteen feet.

Sacco, standing at the rear of his truck, narrowly escaped death. He leaped to safety a moment before the crash.

The injured were taken to the Pierce County Hospital at Tacoma. Mrs. Coote was not told of her husband's death.

The Cootes were visiting at Mrs. Elliott's home.

Pigg arrived a few minutes after the crash. He was aided by Mike Wayno, state patrolman at Tacoma.

Sacco said he had stopped to aid a motorist whose automobile was stalled beside the road. The truck was lighted properly, Pigg reported.

The impact was so severe that Sacco's truck was disabled. [109]

THE SEATTLE DAILY TIMES—#7, June 2, 1934—P. 1, Col. 2, H.E.R.

U. S. ACTION TO PREVENT "BATTLE" ON COAST URGED

Coast awaits Results of Conference Between Roosevelt, Perkins, Johnson, Wagner, McGrady in East

Seattle and other Coast waterfront employers and shipping men today awaited results of a week-end conference on the waterfront strike between PRESIDENT ROOSEVELT, SECRETARY OF LABOR FRANCES PERKINS, GEN. HUGH JOHNSON, NATIONAL RECOVERY ACT ADMINISTRATOR, SENATOR ROBERT WAGNER, CHAIRMAN OF THE NATIONAL LABOR BOARD, AND EDWARD F. McGRADY, ASSISTANT SECRETARY OF LABOR.

McGRADY BOARDED A PLANE IN SAN FRANCISCO FOR WASHINGTON THIS MORNING, AFTER REPEATED EFFORTS AT MEDIATING THE COAST-WIDE MARITIME CRAFTS STRIKE OVER UNION RECOGNITION HAD FAILED.

"BOTH SIDES HAVE ADOPTED THE LAW OF THE JUNGLE," *he told the Associated Press.* "BOTH ARE DETERMINED TO TAKE WHAT THEY WANT, WITHOUT REGARD FOR THE CIVILIZED RIGHTS OF THE PEOPLE OF THE PACIFIC COAST. THE LAW OF THE

JUNGLE IS IN FORCE. IT WILL MEAN DESTRUCTION, PITCHED BATTLE — EVEN MURDER."

TO FORESTALL THAT EVENTUALITY, McGRADY SAID HE WOULD URGE FEDERAL INTERVENTION. THIS MIGHT TAKE THE FORM OF FEDERAL CONTROL OF THE LONGSHORE HIRING HALLS, HE SAID, OR THE ENACTMENT OF A COMPULSORY SHIPPING CODE.

TWENTY UNIDENTIFIED MEN LAST EVENING RAIDED THE HORNSCHUCH WOODWORKING SHOP AT 313 N. 85TH ST., AFTER UNVERIFIED REPORTS THAT SEATTLE WATERFRONT EMPLOYERS PLANNED TO RESUME LOADING SHIPS NEXT WEEK.

THE RAIDERS OVERPOWERED DEPUTY SHERIFF A. H. SWIFT, A NATIONAL GUARD CAPTAIN, WHO WAS SUPERVISING MANUFACTURE OF CLUBS. SHERIFF CLAUDE C. BANNICK SAID OTHER CLUBS WOULD BE MADE.

BANNICK SAID HE HAD SWORN IN 150 SPECIAL DEPUTIES IN CASE THE EMPLOYERS WANTED TO REOPEN THE PORT BY FORCE AND THE CLUBS WERE BEING MANUFACTURED FOR THE DEPUTIES. HE SAID THE COUNTY WAS NOT PAYING THE SPECIAL DEPUTIES AND WAS NOT PAYING FOR THE CLUBS.

The 150 special deputies, added to Bannick's sixty regular aides, would give him a waterfront guard of 210 men.

Swift reported that when the raiders overpowered

him and carried the clubs out to their automobiles, he obtained the license numbers of two of the cars, but they were 1932 license plates.

Meantime sporadic violence was reported by the Associated Press.

Two men, who police said were strikers, chased a Negro into a waiting room in the San Francisco Ferry Building and beat him so severely physicians said he may not recover.

Police Chief J. T. Peterson at San Diego directed construction of barricades across a pier which has been the scene of numerous disturbances.

Armed guards took caravans of trucks to the Los Angeles harbor piers.

At Portland an attempt to move produce from a port terminal by trucks was abandoned as strikers menaced the drivers.

Supplies were being *tationed* at Juneau, Alaska. Authorities said that by tonight six markets in Juneau will be without meat. [110]

THE SEATTLE DAILY TIMES—#6, June 4, 1934—P.1, Col. 7, H.E.R.

CEREMONY AT MIDNIGHT WITNESSED BY LODGMEN

New Executive Completes Cabinet with Exception of Engineer; Ross Only One of Old Board to Remain.

With fellow members of the Shrine Patrol and a few friends on hand to offer congratulations,

Charles L. Smith became mayor of Seattle at midnight last night.

THE INAUGURATING CEREMONY, WHICH FOLLOWED THE PRESENTATION OF A HUGE FLORAL HORSESHOE BY THE SHRINE, TOOK PLACE IN THE MAYOR'S OFFICE AT THE CITY HALL BEGINNING AT THE PRECISE MOMENT WHEN THE TERM OF JOHN F. DORE EXPIRED AND MAYOR SMITH'S TWO YEARS IN OFFICE BEGAN.

A FEW MINUTES AFTER MAYOR SMITH TOOK THE OATH OF OFFICE THREE OTHER OFFICERS OF THE NEW ADMINISTRATION, POLICE CHIEF GEORGE F. HOWARD, FIRE CHIEF CLAUDE W. CORNING AND RUDOLPH BLOCK, JR., SECRETARY OF THE MAYOR, WERE SWORN IN BY CITY COMPTROLLER HARRY W. CARROLL.

Eight hours later Mayor Smith was at the mayor's desk, ready to start the business of his new job. Shake-ups in the Police Department and in City Hall departments under the mayor were being made.

The new police chief not only transferred most of the "gold braids," but also shifted virtually all sergeants and patrolmen. The "ins" went out and the "outs" went in.

Except for city engineer, places on the Board of Works were settled, with Paul Frederickson as superintendent of the Building Department; Dud-

ley Eddy as superintendent of the Streets and Sewers Department; H. D. Fowler, superintendent of the Water Department, and J. D. Ross as light superintendent. Mayor Smith said the engineer's post had been offered to a man who had not decided whether to accept.

The oath ceremony at midnight was simple and brief. A half hour after it began most of the guests had departed, and before 1 o'clock Mr. and Mrs. Smith had started for their home at 2643 Perkins Lane to be greeted by their children, Janice, 6 years old, and Charles, 11, who were allowed to stay up in honor of the occasion.

GEORGE McGILLIVRAY OF THE CITY CORPORATION COUNSEL'S OFFICE, WHERE MAYOR SMITH WAS A STAFF MEMBER BEFORE HIS CAMPAIGN, PRESIDED OVER THE INAUGURATION.

AT 12 O'CLOCK HE INTRODUCED COMPTROLLER CARROLL, WHO MADE A SHORT ADDRESS OF WELCOME.

The Rev. Dr. Cyrus White administered the oath of office as Mayor Smith, sunburned from a recent fishing trip, stood with right hand raised.

The new mayor spoke briefly, told the group before him that he had asked a speedy settlement of the longshoremen's strike and promised his best efforts for a successful administration.

The mayor's mother, Mrs. Mary Smith; his mother-in-law, Mrs. Louise Loer, and his wife were introduced by Mr. McGillivray and each gave Mr. Smith a kiss of congratulation.

Mayor Smith shook hands with his father, Lou C. Smith, former sheriff and former county commissioner, and with his father-in-law, [111] Dr. Thomas R. Loer, and then turned, grinning, to receive congratulations of others in the room.

Mayor Smith is expected to change the Park, Library and Censor Boards extensively, and also make his one appointment to the Civil Service Commission. Harry Westfall, Democratic leader and an attorney, was reported favored for chairman of the Park Board.

Justice of the Peace J. William Hoar also was expected to become Police Court judge in place of Justice William R. Bell. The latter would retain his justiceship, but additional salary of police judge would go to Justice Hoar.

The members of the Board of Works must be confirmed by the Council. Fowler, slated to be water superintendent, is head of the Council. Eddy, chosen for streets and sewers superintendent, is an assistant county engineer and overseas veteran. Frederickson, also a World War veteran, is business agent of the Structural Iron Workers' Union.

Austin E. Griffiths, David Lockwood and James Scavotto were to take office as councilmen; John A. Earley, former county commissioner, was to succeed George F. Cotterill as one of the three port commissioners; on the School Board, Judge Griffiths was to resign to take his Council seat, and James A. Duncan, laborite, was to succeed Paul C. Harper.

THE SEATTLE DAILY TIMES—#6, August 2, 1934—P. 1, Col. 3, C.L.S.

VIOLENCE FLARES HERE AS STRIKE AFTERMATH

Agitators Armed With Pistols Accuse Taxi Driver of Hauling Nonunion Workers to Smith Cove

VIOLENCE FLARED IN SEATTLE LAST NIGHT, IN THE MIDST OF THE WATERFRONT PEACE BROUGHT BY THE END OF THE PACIFIC COAST MARITIME STRIKE, WHEN FORMER STRIKERS OR AGIATORS CARRIED OUT THREATS AGAINST PERSONS CONNECTED WITH NONUNION HANDLING OF CARCO AT SMITH COVE PIERS.

THE NONUNION WORK ENDED BEFORE STRIKERS RETURNED TO DOCK TUESDAY.

GLEN A. BAILEY, A TAXICAB DRIVER, 1245 ROANOKE ST., REPORTER TO POLICE THAT HE ANSWERED A CALL TO AN APARTMENT HOUSE IN SUMMIT AVENUE NORTH, WHERE TWO MEN, WHO HAD ASKED FOR HIS TAXICAB BY NUMBER, ORDERED HIM TO DRIVE NORTH.

IN INTERLAKEN BOULEVARD, BAILEY SAID, THE MEN DREW PISTOLS, ACCUSED HIM OF TAKING NONUNION MEN TO AND FROM PIER 41 DURING THE LONGSHOREMEN'S STRIKE, AND THREATENED TO "GET" HIM.

BAILEY SAID HE PROTESTED THAT ANOTHER DRIVER MUST HAVE TAKEN MEN TO SMITH COVE IN HIS CAB, AND ARGUED WITH THE MEN AS THEY RODE UNTIL THEY ORDERED HIM TO STOP AT A BEER PARLOR NORTH OF SEATTLE.

BAILEY SAID THE MEN PAID THEIR FARE AND RELEASED HIM THERE, BUT WARNED HIM NOT TO REPORT TO POLICE. POLICE GUARDED BAILEY TODAY. [112]

LONGSHOREMEN WORKED ON ALL SHIPS WITHOUT EXCEPTION TODAY, AFTER THE PRESIDENT'S NATIONAL LONGSHOREMEN'S BOARD DECLARED THERE SHOULD BE NO FURTHER STRIKE ACTIVITY.

THE BOARD SENT A FORMAL LETTER OF INSTRUCTION TO ITS AGENTS IN SEATTLE, PORTLAND AND LOS ANGELES, *the Associated Press reported,* ORDERING ALL GRIEVANCES TO BE TAKEN UP THROUGH "PROPER CHANNELS" WITHOUT CESSATION OF WORK.

THE BOARD'S INSTRUCTIONS FOLLOWED A DAY OF ARGUMENT OVER CHARGES OF DISCRIMINATION BY BOTH SIDES. THE CHARGES INTERRUPTED PERMANENT PEACE NEGOTIATIONS IN THE LONG WALKOUT.

TO MEET A SEATTLE LABOR SHORTAGE, 100 MEN WERE BROUGHT HERE FROM TACOMA YESTERDAY. WITH 1,500 LOCAL DOCK WORKERS, THEY STROVE TODAY

TO HANDLE PILED-UP CARGO ON WATER-FRONT PIERS.

NO LET-DOWN OF ACTIVITY WAS IN SIGHT. HIRING HALL OPERATORS SAID MANY HOURS OF OVERTIME WORK ARE AHEAD FOR THE STEVEDORES, AND REPORTED A FEW REQUESTS FOR MEN HAD BEEN DENIED DURING THE SHORTAGE YESTERDAY.

Actual arbitration of the strike was expected to begin next week. Meanwhile longshoremen and employers met at San Francisco today, to outline a program of questions to be arbitrated.

Data on which longshoremen based their strike demands were to be in the hands of employers some time today.

SEATTLE POST INTELLIGENCER, AUGUST 3, 1934—P. 17, Col. 3, C.L.S.

GUARD CUTTER SPEEDS TO AID OF SINKING SHIP

Appeal for Help Sent After Freighter Strikes Reef Near San Juans; Bow Stove in.

Steaming under forced draft the coast guard cutter Snohomish yesterday afternoon was speeding to the assistance of the freighter FOREST KING WHICH WAS HEADING SLOWLY FOR SEATTLE WITH A LARGE HOLE IN HER

BOW, AFTER STRIKING A REEF NEAR SAN JUAN ISLAND.

THE MESSAGE FOR AID WAS SENT BY THE COAST GUARD PATROL BOAT NO. 271 WHICH WITH THE NO. 265 HAS BEEN CONVOYING THE MERCHANTMAN INTO SEATTLE FOR REPAIRS. ACCORDING TO THE RADIO, THE WATER, WHICH EARLIER IN THE DAY HAD BEEN KEPT UNDER CONTROL BY THE FOREST KING'S PUMPS, WAS GAINING RAPIDLY AND FURTHER PUMPING BY ANOTHER VESSEL IS NECESSARY.

IMMEDIATELY UPON REACHING THE FOREST KING THE SNOHOMISH WILL LIE ALONGSIDE AND START HER POWERFUL PUMPS TO FREE THE STRICKEN CRAFT OF THE WATER.

THE FOREST KING, WHICH SAILED FROM SEATTLE WEDNESDAY AFTERNOON FOR ALASKA WITH A NEAR CAPACITY CARGO OF CANNERY SUPPLIES STRUCK AT 4 A. M. YESTERDAY MORNING IN A DENSE FOG. [113]

THE SEATTLE DAILY TIMES, August 4. 1934—P. 7, Col. 2, C.L.S.

BLAZING TIMBER PERIL
WANES ON EAST SIDE

ALTHOUGH SCORES OF FIREFIGHTERS WERE CALLED FROM ABERDEEN TODAY

TO HELP BATTLE THE MILLION DOLLAR BLAZE IN THE COLVILLE NATIONAL FOREST IN EASTERN WASHINGTON, FOREST FIRE DANGER IN THE NORTHWEST WAS WANING FOLLOWING ABUNDANT RAINS YESTERDAY AND THURSDAY.

THE 30,000 ACRE BLAZE WAS REPORTED *by the Associated Press* TO BE ONLY ONE ENDANGERING THE FORESTS OF THE STATE. FOREST SERVICE OFFICIALS ANTICIPATED FURTHER FIRES AS WEATHER FORECASTS IN EASTERN WASHINGTON WERE FOR WARMER TEMPERATURES AND CLEARER SKIES.

SEATTLE VICINITY WILL HAVE UNSETTLED WEATHER FOR THE WEEK-END, WEATHER OFFICIALS PREDICTED, AND FIRE DANGER IN THE OLYMPICS AND SNOQUALIMIE NATIONAL FOREST WILL THUS BE GREATLY REDUCED.

TEMPERATURES NEAR THE FREEZING POINT WERE REPORTED YESTERDAY IN EASTERN WASHINGTON FOLLOWING HEAVY RAINS. ODESSA, LINCOLN COUNTY, LACROSSE, WHITMAN COUNTY, REPORTED 38 DEGREES ABOVE ZERO. TEMPERATURES OF 40 DEGREES WERE RECORDED IN WENATCHEE, RITZVILLE AND WATERVILLE.

JOSEPH HOWARD OF KALISPELL, MONT., WAS KILLED BY A FALLING TREE WHILE FIGHTING THE MEADOW CREEK FIRE IN THE KOOTENAI FOREST.

THE BELLINGHAM HERALD, August 4, 1934
—P. 1, Col. 3, C.L.S.

HITLER PRAISED AS NEW LEADER BY VON PAPEN

Chancellor Termed "Trustee of President Von Hindenburg's Noblest Tradition"

NEUDECK, Germany, Aug. 4—(AP)—CONFIDENCE IN ADOLF HITLER AS "THE LEADER OF NEW GERMANY" WAS EXPRESSED TODAY BY FRANZ VON PAPEN, UNTIL RECENTLY VICE CHANCELLOR AND A CRITIC OF EXTREME NAZISM, AFTER A VISIT TO THE DEATH BED OF PRESIDENT PAUL VON HINDENBURG.

Von Papen said Hitler would serve as "a trustee of President Von Hindenburg's noblest tradition and history who will continue the work to which the life of the sainted field marshal was devoted."

The statement WAS REGARDED AS REASSURING TO NAZIS, SINCE VON PAPEN HAD BEEN CONSIDERED A LEADER OF CONSERVATIVE GERMANY. HE WAS MADE SPECIAL ENVOY TO AUSTRIA LAST WEEK.

A note of apprehension was sounded today as Germany, irrespective of religion and race, mourned her beloved Paul Von Hindenburg.

Gohannes Adolf Cardinal Bertram in a message at Breslau ordering church bells rung in tribute to the dead president said:

"In this exceedingly grave hour our prayers that gracious God may grant our people and our fatherland days of happiness and inner and outer peace are more earnest than ever." [114]

A death mask of Von Hindenburg was taken by Prof. Joseph Thorak, of Berlin. The body of the old warrior-stateman lies in a huge room in his estate here, awaiting burial.

Von Papen was a favorite of Von Hindenburg and it was reported after the June 30 revolt the president sent a stern warning that the vice chancellor must not be molested.

All church bells—Catholic as well as Protestant—are being tolled throughout Germany for an hour each evening until the day of the funeral.

This section is thronged with persons from all walks of life wishing to say farewell to their leader.

SEATTLE POST INTELLIGENCER, August 6, 1934—P. 1, Col. 5, C.L.S.

SAM B. HILL NOT IN SENATE RACE, HE ANNOUNCES

State Democrats See Probability of Lewis Schwellenbach Trying for C. C. Dill's Seat.

State Democratic leaders were speculating *last night* AS TO WHETHER LEWIS B. SCHWELLENBACH, PRESIDENT OF THE BOARD OF

REGENTS OF THE UNIVERSITY OF WASHINGTON, WOULD ENTER THE RACE FOR UNITED STATES SENATOR FOLLOWING A DEFINITE ANNOUNCEMENT BY REPRESENTATIVE SAM B. HILL THAT HE WOULD NOT RUN.

HILL MADE THE following STATEMENT yesterday IN WENATCHEE, *according to an Associated Press dispatch:*

"AS I HAVE PREVIOUSLY SAID SEVERAL TIMES, I WILL BE A CANDIDATE FOR REELECTION TO THE HOUSE OF REPRESENTATIVES."

SCHWELLENBACH WAS OUT OF THE CITY LAST NIGHT AND COULD NOT BE REACHED FOR A STATEMENT AS TO WHETHER HILL'S WITHDRAWAL WOULD PROMPT HIM TO ENTER THE LISTS.

BOTH SCHWELLENBACH AND HILL HAVE BEEN URGED TO MAKE THE RACE SINCE SENATOR C. C. DILL ANNOUNCED HE WOULD NOT BE A CANDIDATE TO SUCCEED HIMSELF.

SEVERAL WEEKS AGO SCHWELLENBACH WROTE HILL A LETTER OFFERING TO SUPPORT HIM IF HE RAN AND DECLARED THAT HILL'S DECISION WAS THE IMPORTANT FACTOR IN SCHWELLENBACH'S OWN PLANS.

"I have announced that I would not make my own decision until after August 5," Schwellenbach said at that time.

In the fact of Hill's declaration yesterday, the date that Schwellenbach set as his own deadline, Democrats locally considered the Schwellenbach candidacy probable.

Hill declined to comment on the requests that he seek the senatorship, according to the dispatch from Wenatchee, but friends there said he was influenced by reluctance to surrender the position of prestige and influence he now holds in house leadership.

He is ranking member of the ways and means committee, a member of the Democratic party's steering committee and of the important committee which names committees. [115]

THE BELLINGHAM HERALD, August 6, 1934

—P. 6, Col. 4, C.L.S.

BAIL IS FORFEITED

Young Reifel Fails to Appeal; $100,000 Taken

SEATTLE, August 6—(AP)—*Federal Judge Jeremiah Neterer today ordered forfeited* THE $100,000 SURETY BOND OF GEORGE REIFEL, SON OF HENRY REIFEL, WEALTHY CANADIAN DISTILLER AND BREWER, WHEN THE YOUNGER REIFEL FAILED TO APPEAR IN COURT FOR ARRAIGNMENT ON AN INDICTMENT CHARGING A *liquor smuggling* CONSPIRACY AGAINST THE GOVERNMENT.

The court granted attorneys for Henry Reifel A CONTINUANCE UNTIL AUGUST 20 OF HIS ARRAIGNMENT ALTHOUGH SAM E. WHITAKER, SPECIAL ASSISTANT U. S. ATTORNEY GENERAL, ASKED FORFEITURE OF THE ELDER REIFEL'S $100,000 BOND, ALSO.

WHITAKER SAID MARINE HOSPITAL *physicians* WERE BALKED IN EFFORTS TO SEE HENRY REIFEL AT VANCOUVER GENERAL HOSPITAL YESTERDAY TO VERIFY REPORTS HE WAS ILL.

THE REIFELS WERE ARRESTED JULY 6 AND RELEASED ON BONDS FURNISHED BY THE AMERICAN BONDING COMPANY OF BALTIMORE, MD. LATER THE BONDS WERE MADE FINAL AND CLAUSES INSERTED GIVING FORTY-EIGHT HOURS FOR APPEARANCE IN CASE THE MEN WERE INDICTED.

Grand jury indictments, opened last week, charged the father and son on two counts with conspiracy to violate tariff acts of 1922 and 1930 by smuggling liquor into this country concealing it and transporting it for sale.

The government has a civil suit for $17,250,000 pending against the Reifels, of which $7,250,000 represents fines and penalties and the remainder the value of 100,000 cases of liquor which the government accuses the Reifels of bringing into this country during the prohibition period.

When the Reifels failed to appear a week ago for a scheduled hearing before U. S. Commissioner H.

S. Elliott. Whitaker took steps toward forfeiture of the bonds by transferring the cases to federal court.

Defense Attorneys Don G. Eggerman and Edward G. Rosling renewed their plea that Henry Reifel is too ill to appear.

Statements of Vancouver, B. C., doctors that the elder Reifel is suffering from diabetes and since his arrest has developed high blood pressure, rapid pulse, inability to sleep and a general nervous chock were laid before the court by his attorneys.

"I expected something like this," Whitaker said, and told Judge Neterer he had sent two public health physicians to Vancouver yesterday to examine the elder Reifel and report on his condition.

Whitaker said he was told at the Reifel home that Henry Reifel was in the hospital, the physicians went to the Vancouver General hospital where an interne refused them admittance to Reifel's room.

After an hour, he said, the doctors prevailed on an attendant to ask the elder Reifel if he would see them. The attendant returned to say that Reifel had refused.

Despite statements of Eggerman and Rosling that their younger client was at his father's beside and the father wanted him to remain there, Judge Neterer said he believed George Reifel's failure to appear today was "wilful."

After the younger Reifel's bail, was forfeited, Whitaker asked a $250,000 bail be set for him should he be rearrested. [116]

"That's a pretty large sum," Judge Neterer said. "I will consider the amount of bail if George Reifel is arrested and brought before me."

Whitaker said young Reifel cannot be rearrested unless he sets foot on United States soil, because the offenses with which he is charged are not extraditable.

THE SEATTLE DAILY TIMES, August 6, 1934—P. 3, Col. 1, C.L.S

NEW N. W. FIRES CAUSE ALARM; FIGHTERS HURT

THE NORTHWEST SETTLED DOWN TO ANOTHER PERIOD OF WATCHFUL WAITING TODAY AS FOREST FIRE HAZARDS INCREASED AND NEW BLAZES OVER THE WEEK END WERE REPORTED IN WASHINGTON, OREGON, IDAHO AND MONTANA, READY TO SWEEP THROUGH VALUABLE TIMBER SHOULD WINDS ARISE.

TWENTY FIRE FIGHTERS WERE INJURED, TWO SERIOUSLY, WHEN TWO TRUCKS RETURNING FROM A BLAZE IN NORTHWESTERN MONTANA, OVERTURNED YESTERDAY, *the Associated Press reported.* MOST SERIOUSLY INJURED WERE CARL HANSEN OF MISSOULA AND JOE KENNEDY OF SPOKANE.

FOUR CIVILIAN CONSERVATION CORPS WORKERS, CLYDE GILL, HENRY EDDINGTON, VON BELL AND ALBERT BANGO, ALL OF FORT GEORGE WRIGHT, SPOKANE, FIGHTING THE TROUT CREEK FIRE NEAR MISSOULA, WERE INJURED WHEN THEIR TRUCK OVERTURNED.

THE 30,000-ACRE BURN NEAR CURLEW, FERRY COUNTY, WAS REPORTED UNDER CONTROL AS HUNDREDS OF MEN STOOD GUARD. SCATTERED BLAZES SET BY LIGHTNING, WERE REPORTED ON THE DECLINE IN NORTHWESTERN IDAHO AND MONTANA. TWO FIRES WERE REPORTED NEAR CRATER LAKE, ORE.

Seattle and vicinity WILL REMAIN COOL TONIGHT AND TOMORROW WITH LIGHT SHOWERS FORECAST FOR TONIGHT ONLY, THE WEATHER BUREAU REPORTED. COOL WEATHER AND RAINFALL HAVE DISPELLED FIRE DANGER IN THE OLYMPIC AND SNOQUALMIE NATIONAL FORESTS, BUT WARMER WEATHER, FORECAST IN EASTERN WASHINGTON, PROBABLY WILL INCREASE THE fire danger there.

A rainstorm at Nephi, Utah, yesterday plunged the city in darkness and washed out crops on nearby farms.

SEATTLE POST INTELLIGENCER, August 7, 1934—P. 1, Col. 6, C.L.S.

HUBBARD TOOK RUM TO CAMP, U. S. CHARGES

Part of Government Liquor Also Assuaged Legion Thirst in 1931 Indictment Indicates

Part of the government LIQUOR WHICH GEORGE D. HUBBARD, FORMER CUSTOMS

COLLECTOR, IS ACCUSED OF CONVERTING TO HIS OWN USE, IS ALLEGED TO HAVE BEEN DELIVERED TO THE LEOPOLD HOTEL IN BELLINGHAM WHEN THE STATE CONVENTION OF THE AMERICAN LEGION WAS IN PROGRESS THERE ON AUGUST 20, 1931.

AND ANOTHER PART IS SAID TO HAVE BEEN DELIVERED TO HUBBARD'S TENT IN THE NATIONAL GUARD ENCAMPMENT AT CAMP MURRAY ON JUNE 16, 1932. [117]

THIS WAS REVEALED FOR THE FIRST TIME YESTERDAY WHEN HUBBARD WAS ARRAIGNED ON THE INDICTMENTS WHICH HAD HERETOFORE BEEN KEPT SECRET BEFORE FEDERAL JUDGE JOHN C. BOWEN.

HUBBARD, HOWARD R. CROW, FORMER DEPUTY COLLECTOR AT BELLINGHAM, AND PERRY V. WILCOX, FORMER CAPTAIN OF CUSTOMS GUARDS, WERE GIVEN TWO WEEKS TO ENTER PLEAS. SAMUEL LEWIS, FORMER INSPECTOR WHO SERVED AS HUBBARD'S DRIVER AND WAS ALSO INDICTED, HAS NOT YET BEEN APPREHENDED.

THE PRINCIPAL INDICTMENT CHARGED HUBBARD, CROW, WILCOX AND LEWIS WITH CONSPIRING TO CONVERT CONFISCATED LIQUOR TO THEIR OWN USE AND

WITH THUS CONSPIRING TO DEFRAUD THE UNITED STATES.

IT WAS ALLEGED IN THE INDICTMENT THAT THE FOUR DEFENDANTS ORIGINATED THE CONSPIRACY EARLY IN 1930 WITH ROBERT B. KNOX, PERCY C. McNAUGHT, JOSEPH B. COLOMBO AND CHAUNCEY C. McSLARROW, ALL CUSTOMS OFFICERS. McSLARROW, COLOMBO AND KNOX WERE SUSPENDED AT THE SAME TIME AS CROW, WILCOX AND LEWIS LAST NOVEMBER, BUT WERE AFTERWARD RESTORED TO DUTY, ALONG WITH WILLIAM C. TURNBULL, FORMER CAPTAIN OF I SPECTORS, WHO HAD ALSO BEEN SUSPENDED.

The first overt act charged that early in 1930 Hubbard instructed Knox and McNaught, in charge of the customs seizure room at 87 Lenore St., to make deliveries of liquor to Wilcox, Lewis and Crow.

As a result, it was alleged, on August 20, 1931, McSlarrow and Wilcox removed twenty-four pints of whiskey to the Leopold hotel in Bellingham.

On December 26, 1931, it was asserted, Hubbard ordered 1,000 bottles of confiscated whiskey and gin set aside. This was just a day after a customs patrol had seized seventy-eight cases of assorted liquors on the Olympic Peninsula near Lake Quinault.

The next overt act recited that on January 29, 1932, Hubbard, Knox and McNaught executed a certificate that 528 quarts and 408 pints of whiskey and sixty quarts of gin had been destroyed. Within three or four months after the seizure, it was charged, Hubbard, Lewis, Wilcox and Crow removed 250 bottles of liquor.

On. June 16, 1932, it was asserted, McSlarrow moved an unspecified quantity of liquor to Hubbard's tent at Camp Murray.

In the next overt act it was charged that on November 10, 1932, Turnbull, Roy L. Ballinger and George W. Harlow delivered eighty-four quarts of liquor to Hubbard's office in the postoffice building.

The last two overt acts charged that Lewis removed 125 gallons of alcohol from the appraiser's stores on December 21, 1932, and January 5, 1933. All the overt acts were repeated in the second count of the indictment.

The other indictments, returned against Hubbard and Lewis alone, related to the alleged smuggling of fourteen bottles of Scotch whiskey, thirteen bottles of cognac and twelve bottles of gin from the German motorship Vancouver on May 23, 1933.

The fourth indictment, made public some time before, named only Hubbard, accusing him with the embezzlement of the eighty-four bottles of liquor which figured in one of the counts of the big indictment. [118]

THE BELLINGHAM HERALD, August 7, 1934
—P. 1, Col. 2, C.L.S.

TROOPER FIRES ON CITY HALL SNOOPER

Second Shot, Accidental Discharge of Militiaman's Pistol, Causes Excitement

TWO BROTHERS OPPOSED

One Belongs to Guard, Other Joins Police Force

NEW ORLEANS, Aug. 7—(AP)—*The first gunfire of the Huey P. Long-Mayor T. Semmes Walmsley political mobilization sounded today when a* GUARDSMAN AT JACKSON BARRACKS FIRED TWICE AT AN UNIDENTIFIED SNOOPER, AND A MILITIAMAN *later* ACCIDENTALLY DISCHARGED HIS PISTOL AT THE CITY VOTING REGISTRATION OFFICE.

The latter shot broke a plate glass window in city hall annex and threw the city hall area into confusion.

There was plenty of excitement, but no casualties, in both instances.

Adjacent streets were crowded with citizens on their way to work when the pistol shot crashed out of the registration office in the city hall annex.

seized by the state militia more than a week ago and since held by force of arms.

Inquiry brought the information that the shot had been discharged accidentally from a .45 revolver being cleaned by a guardsman.

Earlier a sentry at Jackson barracks, headquarters of the national guardsmen called out by the state administration in the Long-Walmsley "war," fired twice at an unidentified man he said was attempting to pass into the barracks.

The sentry said that when he spied the man behind some bushes he ordered him to halt, but the man jumped up and sped away instead. The sentry fired two shots, neither of which is believed to have taken effect.

The guardsmen still are stationed in the registration office, equipped with machine guns, rifles, gas bombs and gas masks.

Mayor Walmsley's forces are concentrated in the city hall just across a narrow street from the registration office, also heavily armed.

The week-long war is a prelude to the September congressional primary election in which Long and Walmsley are supporting opposing candidates.

As in the war between the states, two brothers shouldered arms today on opposing sides in the "war" between Senator Long and Mayor Walmsley.

The senator himself was called to appear in court and show reason for Governor O. K. Allen's continued domination of the city voters' registration office with national guard troops, helmeted and

armed with rifles and machine guns, under the executives "partial martial law" proclamation of early last week.

A temporary restraining order issued by Judge Nat W. Bond, of civil district court, ordered the troops disbanded. The senator has been reported "missing" for the past two days.

One of the brothers is Anthony Powers, 23-year-old khaki-clad sergeant in the medical corps of the national guard, who was called [119] into service in the political and militaristic expedition of Long and Allen.

The other brother is Patrick Powers, 25, who armed himself and went on duty as a special policeman in Mayor Walmsley's police army which is matching the guardsman man for man and gun for gun and is holding the city hall against any possible attempt at invastion by the national guard.

THE SEATTLE DAILY TIMES, August 7, 1934 —P. 7; Col. 1, C.L.S.

CLEARING SKIES INCREASE FEAR OF FOREST FIRES

RISING TEMPERATURES, CLEAR SKIES AND LOW HUMIDITY TODAY INCREASED THE FIRE DANGER IN NORTHWEST FORESTS WHILE DANGEROUS BLAZES CONTINUED TO HARASS HUNDREDS OF FIGHTERS IN WESTERN WASHINGTON AND CENTRAL IDAHO.

HUNDREDS OF CIVILIAN CONSERVATION CORPS WORKERS WERE BATTLING NEW LIGHTNING FIRES IN MONTANA. MORE MEN WERE BEING RUSHED TO DARBY, MONT., WHERE THE LARGEST BLAZE WAS REPORTED, *the Associated Press reported.* FOUR FIRES REMAINED OUT OF CONTROL IN IDAHO, the most serious being in the Idaho National Forest, 150 miles northeast of Boise.

EASTERN WASHINGTON REPORTED NO NEW SERIOUS FIRES TODAY, BUT THE 30,000 ACRE BURN IN THE COLVILLE NATIONAL FOREST CONTINUED TO SMOULDER AS HUNDREDS OF MEN STOOD GUARD.

SEATTLE AND VICINITY WILL HAVE FAIR WEATHER TONIGHT AND TOMORROW, THE WEATHER BUREAU FORECAST. Yesterday's maximum temperature here was 72 degrees.

THE BELLINGHAM HERALD, August 8, 1934
—P. 9, Col. 3, C.L.S.

STRIKE HEARING ON

Longshoremen and Waterfront Employers Confer

SAN FRANCISCO, Aug. 8—(AP)—BEHIND CLOSED DOORS, The ARBITRATION HEARING OF THE STRIKE OF PACIFIC COAST

LONGSHOREMEN BEGAN IN FEDERAL JUDGE FRANK H. KERRIGAN'S COURT-ROOM HERE TODAY.

ABOUT TWENTY REPRESENTATIVES OF THE LONGSHOREMEN AND *the waterfront* EMPLOYERS *were closeted with President Roosevelt's mediation board* to discuss means of settling the dispute.

Th*mo*as G. Plant and Attorney Herman Phleger represented the waterfront employers and Attorney H. E. Melnikow spoke for the members of the International Longshoremen's association.

The board was to hear the viewpoint of San Francisco and Oakland workers and employers before moving on to Portland, Seattle, Tacoma and finally Los Angeles.

A DECISION MIGHT BE EXPECTED from the board WITHIN TWO WEEKS it was indicated, *should the hearings in the several ports proceed without interruption.*

Control of hiring agencies, together with hours of work, wages and working conditions are points at issue in the dispute which resulted in the longshoremen walking out May 9 and led to a mass strike of organized labor in the San Francisco Bay region [120] before arbitration was agreed upon.

As the meeting opened here today employers still question certain classifications of International Longshoremen's association members, claiming checkers and tally men do *no* constitute longshoremen.

The hearing here was expected to last three days. All sessions of the board will be private.

THE SEATTLE DAILY TIMES #6, August 9, 1934—P. 5, Col. 8, C.L.S.

MRS. STEWART'S WILL PROBATED

AN ESTATE OF $300,000 IN CASH, STOCKS, BONDS AND REAL ESTATE WAS LEFT BY MRS. MAY E. STEWART, WHO DIED JULY 25, TO HER DAUGHTER MRS. ALMA STEWART BALLINGER, IT WAS REVEALED WHEN HER WILL WAS PROBATED BEFORE JUDGE WILLIAM G. LONG YESTERDAY.

MRS. STEWART WAS THE WIDOW OF A. B. STEWART, PIONEER SEATTLE WHOLESALE DRUGGIST.

THE BELLINGHAM HERALD, August 10, 1934—P. 1, Col. 6, C.L.S.

IDAHO SOLON FLAYS F. D. R. IN TALK

Crop Destruction Is Branded "Contrary to every Phase of Political Philosophy"

AMAZING MYSTERY

Attacks Monopoly, Freight Rates, Currency System

MERIDIAN, Idaho, Aug. 10. (AP)—SENATOR WILLIAM E. BORAH TODAY was on record as

charging the present national administration crop program is "contrary to every phase of President Roosevelt's political philosophy."

The "amazing mystery" about the theory of crop destruction, he declared, is "who sold it to President?"

Crop reduction, the senator held in his address here yesterday is not necessary to save the farmer. *In its stead he* RECOMMENDED TERMINATION OF MONOPOLIES, PROTECTION FROM UNJUST FREIGHT RATES AND PROVISION OF A "SOUND AND SUFFICIENT CURRENCY SYSTEM."

He predicted that legislation which did not receive congressional approval in the last session will probably come up for consideration again "to give the secretary of agriculture power to prescribe what a farmer may sow or plant, even what turkeys and chickens he may raise, and to manage in great detail the entire farm operation." [121]

Noting what he regarded as a conflict between the political philosophy of the nation's leader and the farm program, he said:

"*The President of the United States* IS RARELY GIFTED WITH A DEEP AND ABIDING SENSE OF OPTIMISM. *This is well illustrated in the last few days in his plan to develop power in the Northwest a quarter of a century in advance of demands. The destruction of food and things of which clothing are made in the midst of millions of hungry and illclad men and women is the last spasm of pessimism.* It has never seemed to me to

be any part or parcel of the philosophy of recovery or the political philosophy of the President."

THE BELLINGHAM HERALD, August 10, 1934 — P. 1, Col. 4. C.L.S.

VETERANS RE-ELECT
STAFF OF OFFICERS

Officers of the NORTHWEST VETERANS' ASSOCIATION, AFFILIATED WITH THE G. A. R., were REELECTED *at the annual meeting in the Armory Wednesday afternoon. They are*: D. H. THOMPSON, BELLINGHAM, PRESIDENT; GEORGE PAYNE, BELLINGHAM; BERTHA CARROLL, LYNDEN, AND ANNA PRESTON, BLAINE, VICE PRESIDENTS; MRS. O. E. PLUMB, SECRETARY, AND MRS. IONE WILLIAMSON, TREASURER.

APPROXIMATELY SEVENTY MEMBERS ATTENDED FROM BLAINE, LYNDEN, SEDRO-WOOLEY, MOUNT VERNON and Bellingham, *and voted to* HOLD THE 1935 MEETING IN BELLINGHAM.

At the luncheon the delegates were welcomed by Rev. Earl Hanson Fife. On the program, arranged by Mrs. Annie Alexander, were readings by Mrs. Florence Hurd, Mrs. Harriet Dunlap, Mount Vernon, and Mrs. Jennie Lloyd, and accordion solos by Laurel Dykstra.

A patriotic address was delivered at the afternoon session by Judge W. P. Brown.

THE SEATTLE DAILY TIMES, August 14, 1934 — Page 5, Col. 7. C.L.S.

RATHER THAN DESTROY COTTON, MAN KILLS SELF

GREENVILLE, S. C., Tuesday, Aug. 14—(AP) —RATHER THAN PLOW UP THREE ACRES OF COTTON HE HAD LABORIOUSLY CULTIVATED, B. B. MEDLOCK, 48 years old, TENANT FARMER *near here,* SHOT AND KILLED HIMSELF yesterday.

FEDERAL INSPECTORS FOUND MEDLOCK HAD THREE ACRES MORE THAN HE WAS ALLOWED UNDER A REDUCTION CONTRACT *and ordered him to destroy the extra acreage.* Another tenant will plow up the cotton. [122]

The Seattle Times, #6, August 10, 1934, Page 1, Col. 4. C.L.S.

36 NEW DEATHS IN TORRID ZONE OF MIDDLE WEST

By Associated Press

THE HEAT WAVE *held on tenaciously today, with a steadily mounting toll of victims.*

THIRTY SIX PERSONS are known to have perished during the past few days as a result of the record-breaking temperatures that baked the mid-

continent, with no immediate general relief in sight.

A cool wave, reported sweeping down on the stricken areas from the Far North, failed to put in its appearance yesterday and temperatures skyrocketed far beyond the century mark at a number of points. Scores were prostrated. FURTHER CROP LOSSES WERE REPORTED.

Texas had fifteen deaths. Nebraska counted seven dead since last Saturday, and although scattered rains fell throughout the state, reports said that little was left of grains, pastures, potatoes, forage crops and gardens, seared by hot winds and devastating heat.

It was 103 in Lincoln, the state's capital yesterday—the fifth day in which 101 was exceeded in the past week.

Missouri has had three heat deaths since the current hot spell began, Illinois three, Indiana and Arkansas one each; Wisconsin, Michigan and Ohio, two each, while Ohio in addition counted five deaths as an indirect result. These five were drowning victims. Electrical storms hit Dayton, Columbus, Sidney and Springfield, Ohio. One man was killed by lighting in Springfield.

Four other persons perished near Denver in a terrific rain flood and half-storm.

The Rocky Mountain region was cooler, but the Middle West boiled. Nowata, Okla., had a maximum temperature reading of 114. Kansas City, where two of the Missouri death victims were reported had a high of 110.

THE MERCURY HIT 113 AT EMPORIA, KAS., further complicating the water shortage

problem. Emporia authorities attempted to conserve water by limiting the depth of bathtub water to four inches. EMPORIA HAS HAD *FIFTH* FIVE CONSECUTIVE DAYS OF TEMPERATURES ABOVE THE 100 MARK, AND MANY OTHER COMMUNITIES HAVE SUFFERED SOMEWHAT SIMILAR FATES.

Oklahoma City, where no rain had fallen in forty-two days reported a temperature of 104 yesterday—the thirty seventh day of more than 100 degrees.

A few of the other spots on the weather man's map were: Dallas, 100; Fort Wayne, Ind., 102; Peoria, Ill., 104; Springfield, Ill., 108; equaling the all-time record of the day previous; Concordia, Kas., 108; Des Moines, Iowa, 106; St. Louis, 108; Omaha, 102, Chicago, 95, and Cincinnati 96.

Justice of Peace Frank D. Meyer collapsed in his courtroom at Quincy, Ill., when the temperature reached 111 degrees.

Fred Jones, appearing before the justice on a charge of threatening to slay his father-in-law, gave the justice first aid.

Seattle Post Intelligencer, August 10, 1934. Page 2, Col. 6. C.L.S.

SUMMARY OF DAY'S NEWS

LOCAL.

Jimmie McBraun, sixteen, Seattle boy missing since March 25, 1933, found alive and well in Tacoma (Page 1, Col. 2, Part 1)

Street Cars to appear under *newbers* when "loop"

rerouting system goes into effect Sunday (Page 1, Col 3, Part 1)

Only 56 cents of late Mrs. SARAH SMITH SCOLLARD'S FORTUNE THUS FAR LOCATED BY ADMINISTRATOR (Page 3, Col. 6, Part 1)

COUNTY BEER PARLORS TO BE REQUIRED TO USE NEW STERILIZING PROCESS IN WASHING BEER GLASSES (Page 8, Col. 1, Part 1) [123]

Half-holiday to mark opening of Seattle Potlatch celebration under plan to be laid before Mayor Smith. (Page 5, Col. 4, Part 1)

City Council approves million dollar bond issue to pay back salaries of policemen and firemen. (Page 3, Col. 1, Part 1)

MYSTERIOUS DEATH OF ARTHUR HULSEMAN, MARINE ENGINEER, APPARENTLY A SUICIDE, PUZZLES AUTHORITIES (Page 1, Col. 8, Part 2)

GOVERNMENT TIES UP 1,100 CASE OF WHISKEY AND MORE THAN $14,000 IN CASH IN $17,250,000 SUIT AGAINST HENRY AND GEORGE C REIFELS, MILLIONAIRE CANADIAN DISTILLERS. (Page 3, Col. 2, Part 1)

HARRY E. NIEBERGALL, VETERAN RAILWAY WORKER, FOUND DROWNED IN SOUND. (Page 13, Col. 2, Part 1)

Northwest.

STATE HIGHWAY DIRECTOR CREATES NEW PATROL TO HALT USE OF HIGH-

WAYS BY OVERLOADED TRUCKS. (Page 13, Col. 1, Part 1)

National.

PRESIDENT ROOSEVELT NATIONALIZES SILVER. (Page 1, Col. 8, Part 1)

MARKETS RISE ON SILVER ACTION. (Page 1, Col. 6, Part 1)

FOUR DIE IN CLOUDBURST NEAR DENVER (Page 1, Col. 6, Part 1)

MOTHER OF THREE ELECTROCUTED FOR MURDER (Page 1, Col. 4, Part 1.)

SEVEN DIE AS MIDWEST HEAT CONTINUES (Page 2, Col. 5, Part 1)

FOREIGN.

BAGDAD FLYERS DOWN IN LONDON. (Page 2, Col. 8, Part 1)

BRITAIN WOULD INCREASE CRUISER STRENGTH (Page 4, Col. 4, Part 1)

HITLER GIVES AMNESTY TO THOUSANDS (Page 4, Col. 6, Part 1)

The Seattle Daily Times, #6, August 11, 1934. Page 1, Col. 5.— H.E.R.

CITY BEER PARLORS TO OBEY SUNDAY SALES BAN

Surprise Order by Police Chief Is Followed By Announcement of Venders That They Will Close

SEATTLE BEER PARLORS TODAY WERE PREPARED TO OBEY POLICE CHIEF

GEORGE H. COMSTOCK'S ORDER THAT THEY LOCK THEIR DOORS AT MIDNIGHT TONIGHT AND SELL NO BEER UNTIL MONDAY.

IN A SURPRISE MOVE COMSTOCK ISSUED THE SUNDAY CLOSING ORDER LATE LAST NIGHT.

THE ORDER WAS SENT OUT AFTER THE CHIEF RECEIVED A LEGAL OPINION FROM CORPORATION COUNSEL A. C. VAN SARLEN HOLDING THAT A 1909 LAW, PROHIBITING THE SALE OF EVERYTHING BUT NECESSITIES ON SUNDAY STILL IS IN EFFECT AND WILL BE APPLIED TO BEER SALES IN THE CITY.

THE SUNDAY BEER BAN MAY SPREAD THROUGHOUT KING COUNTY NEXT WEEK END. PROSECUTOR ROBERT M. BURGUNDER SAID HE WOULD ASK THE COUNTY COMMISSIONERS MONDAY WHETHER THEY WANT THE SUNDAY CLOSING LAW ENFORCED IN BEER PARLORS THROUGHOUT THE COUNTY.

COMMISSIONER WILMER B. BRINTON ANNOUNCED WE WILL OPPOSE CLOSING OF BEER PARLORS IN THE COUNTY OUTSIDE SEATTLE.

"The people repealed the prohibition law so they could drink," Brinton said. "I'm in favor of letting them drink on Sunday if they wish. Closing of beer parlors on Sunday will make speakeasies flourish and drive trade out of this county."

Ernie Huhan, secretary-treasurer of the Wash-

ington State Beverage Dealers' Association, which has approximately one hundred and seventy-five beer parlos and restaurants dispensaries as members, said nō move would be made at this time to oppose Comstock's edict.

"The law is on the books and we expect to obey it," Hahn said. "I'm in favor of Sunday closing, anyway. But the closing order should apply throughout the state. Closing of Seattle beer parlors will just drive all the trade out into the country. [124]

The Seattle Daily Times, 36, August 13, 1934.—Page 1, Col. 5. C.L.S.

PRINCE GONZALO, ALFONSO'S SON, KILLED IN CRASH

By Associated Press

KLAGENFURT, Austria, Monday, Aug. 13.—DON GONZALO, 19-YEAR OLD PRINCE OF SPAIN, and FOURTH SON OF ALFONSO, FORMER KING OF SPAIN, DIED TODAY *of the family malady of hemophilia or skin-bleeding, caused by an automobile accident.*

Death came at Poertschah-on-Woerther See, THE VILLA OF EXILE FOR THE ROYAL FAMILY.

The Prince, whose full name was Gonzalo Manuel Maria Bernardo Narciso Alfonso Mauricio, was injured late last night in an automobile accident while returning to the *f*illa from Klagenfurt with his sister, the Infanta Beatriz.

A physician said the injuries suffered by the

prince would not have caused death to an ordinary person but in his case the doctors were unable to stay the flow of blood.

The Infanta, who is 25, *was driving the car at the time* of the accident. *She swerved it into a wall to avoid running down a German bicyclist,* Baron Richard von Heinsmann. The prince was hurt in the resulting crash.

The baron was arrested. PRINCESS BEATRIZ WAS PROSTRATED BY GRIEF TODAY.

Don Gonzalo was taken to the villa at once but he died soon after his arrival. He passed away while his father held his hand and his sister and brothers knelt in prayer.

The Prince's body will be held twenty-six hours pending the return from Davos, Switzerland, of the former Queen Victoris, who is to decide whether her son shall be buried in Austria or elsewhere.

Hundreds of telegrams of sympathy have poured in on the royal family from all parts of the world.

Alfonso himself was involved in an automobile accident in Vienna a month ago and the following day his chauffeur ran down and killed a pedistrian.

The Seattle Daily Times, #6, August 13, 1934.—Page 2, Col. 2. C.L.S.

TWO MEN DIE IN 4 SUICIDE TRIES; ANOTHER HUNTED

TWO MEN KILLED THEMSELVES YESTERDAY, A THIRD MAN WAS BELIEVED

TO HAVE LEAPED TO HIS DEATH FROM A LAKE WASHINGTON FERRY, AND A WOMAN'S REPORTED SUICIDE ATTEMPT BY POISON WAS THWARTED BY A BYSTANDER.

THE WOMAN GAVE HER NAME AS FREDRICKA HARTMAN, 44 YEARS OLD. THE TWO MEN WHO ENDED THEIR LIVES WERE GEORGE RENKO, 60-YEAR-OLD FORMER PARK DEPARTMENT GARDNER, 1510 STEVENS ST., AND OSBERT D. POLLEY, 74 YEARS OLD, 9414 13TH AVE. S. W. THE MAN MISSING FROM THE FERRY IS ROBERT M. LAPSLEY, FORMERLY OF PHILADELPHIA, WHO HAS BEEN LIVING AT THE YOUNG MEN'S CHRISTIAN ASSOCIATION.

Police said the woman drank poison on the street at Railroad Avenue and Pike Street. A pedestrian, George Yaselunas, 6622 14th Ave., S. W. saw her and summoned aid. She was reported recovering today at City Hospital. Police said she wouldn't tell why she took the poison.

Renko killed himself by leaping from the 12th Avenue South bridge over Dearborn Street last evening. Nick Tekich, 1007½ Weller St., told Chief Deputy Coroner W. G. Corson he saw Renko climb over the rail, pause for a moment and then plunge to the ground. Dr. Corson said Renko had been ill.

Polley, despondent over poor health, shot himself as he lay in bed. A neighbor, Peter Grant,

9426 13th Ave., S. W., found the body when he returned two hours after taking a dish of ice cream to Polley.

Search of Lake Washington for Lapsley's body was begun last night after his coat, containing an apparent suicide note, was found on the ferry Leschi plying between Leschi and Medina. No one reported seeing him leap.

The note said the writer was "going overboard tonight" and ended with, "Oh, death, where is thy sting?" Lapsley had been staying this summer at the [125] Y.M.C.A. summer camp near Bellevue.

The Associated Press said Lapsley formerly lived at the Engineers Club in Philadelphia, but suffered a nervous breakdown and left for the West in May, 1933.

The Seattle Daily Times, #6, August 14, 1934.—Page 1, Col 8. C.L.S.

FLAMING SNAGS HURT FOUR: LOSS IN MILLIONS

Two Workers Die Fighting Selway Blaze in Idaho; Third Victim Was Battling Blaze in California.

THESE CIVILIAN CONSERVATION CORPS WORKERS WERE KILLED AND FOUR IN-

JURED IN FOREST FIRES WHICH YESTERDAY GAINED NEW HEADWAY IN THE PACIFIC NORTHWEST AND CALIFORNIA AND WERE TODAY THREATENING MORE STANDS OF VALUABLE TIMBER. LOSS HAD MOUNTED INTO THE MILLIONS OF DOLLARS.

TWO OF THE WORKERS KILLED WERE LEROY MCGINNIS, KEWANEE, ILL., AND LESTER JOHNSON, GALESBURG, ILL., WHO WERE STRUCK BY FALLING SNAGS WHILE BATTLING THE HUGE BLAZE IN THE SELWAY NATIONAL FOREST OF CENTRAL IDAHO, *the Associated Press reported.* FOUR OTHER WORKERS WERE INJURED THERE.

THE THIRD MAN KILLED, WILLIAM MATTISON, 21-YEAR-OLD C.C.C. WORKER OF LOS ANGELES, ALSO WAS CAUGHT UNDER FALLING SNAGS. HE WAS FIGHTING A BLAZE NEAR NEVADA CITY, CALIF.

MORE THAN FOUR THOUSAND MEN WERE REPORTED ON THE FIRE LINE IN THE LARGEST BLAZE OF THE NORTHWEST, THAT IN THE SELWAY NATIONAL FOREST IN IDAHO. SPOT FIRES STARTED BY SPARKS FLYING FROM THE BLAZE ARE BURNING SINCE ATTEMPTS TO TRANSPORT MEN TO THE FIREST HAVE PROVED FUTILE BECAUSE OF THE ISOLATED LOCATIONS.

WORKERS WERE TODAY HURRYING TO

THE CANADIAN BORDER TO PREVENT FLAMES FROM THE BURNING FORESTS OF SOUTHEASTERN BRITISH COLUMBIA SPREADING INTO NORTHEASTERN WASHINGTON.

Washington continued to be free from any dangerous fires.

Lookouts near Bend, Or., after fighting the dangerous blaze in the Metolius National Forest last week, today turned their interests to meteor hunting. Residents of Bend reported that an explosion was heard in the city Sunday evening when a meteor struck the earth.

ALTHOUGH ONE THIRD OF THE NATIONAL BUFFALO RANGE NEAR MOIESE, MONT., WAS REPORTED DESTROYED BY FIRE YESTERDAY, NONE OF THE ANIMALS WAS KILLED, ROBERT S. NORTON, SUPERINTENDENT OF THE RANGE, SAID TODAY. THE FIRE WAS CONTROLLED LATE YESTERDAY.

FORESTS IN THE SNOQUALMIE AND OLYMPIC PENINSULA REGIONS STILL REMAINED "DRY BUT FREE FROM FIRES," LOCAL FOREST SERVICE OFFICIALS REPORT. ALL PARTS OF WASHINGTON WILL REMAIN FAIR TONIGHT AND WEDNESDAY WITH CLOUDS OVER SEATTLE AND VICINITY IN THE MORNING.

Temperature for Seattle and vicinity will remain near the 74 degree maximum of yesterday. [126]

SEATTLE POST INTELLIGENCER, August 14, 1934 — Page 3, Col. 1. C.L.S.

SEEK LICENSES IN BUSINESS DISTRICT ONLY

Griffiths Agrees on Intolerable Conditions, but Wants State Board Held Responsible.

CHARGES THAT CONDITIONS IN MANY OF THE CITY'S BEER PARLORS ARE "INTOLERABLE AND DISGRACEFUL" WERE VOICED BY COUNCILMAN JAMES SCAVOTTO BEFORE THE CITY COUNCIL LICENSE COMMITTEE YESTERDAY.

THE COUNCIL COMMITTEE HAD UNDER CONSIDERATION SCAVOTTO'S PROPOSED RESOLUTION URGING THE STATE LIQUOR CONTROL BOARD HEREAFTER TO GRANT BEER LICENSES ONLY TO ESTABLISHMENTS LOCATED IN "STRICTLY BUSINESS DISTRICTS."

"IF THE CITY COUNCIL HAD THE CONTROL OVER BEER LICENSES, 50 PERCENT OF THE PLACES NOW OPERATION WOULD HAVE NEVER GOTTEN TO FIRST BASE WITH THEIR APPLICATIONS FOR LICENSES," SCAVOTTO SAID.

"COUNCILMEN WOULD HANG THEIR HEADS IN SHAME IF THEY HAD GRANTED THE LICENSES FOR MANY OF THE PLACES NOW RUNNING."

COUNCILMAN AUSTIN E. GRIFFITHS INDORSED SCAVOTTO'S CHARGES AS TO CONDITIONS BUT MAINTAINED THAT THE COUNCIL SHOULD KEEP A "HANDS OFF POLICY" AND LET THE STATE LIQUOR CONTROL BOARD BEAR THE RESPONSIBILITY FOR CONDITIONS.

Griffiths declared that "sooner or later there is going to be a revulsion of feeling on the part of the people against the debauchery that has grown out of the beer licenses as at present handed out.

"Why, in my own district, we have three beer parlors that should never have been licensed," Griffiths declared. "They are demoralizing our community."

Councilman John E. Carroll agreed with Griffiths that the state board should be permitted to have full responsibility.

SEATTLE POST INTELLIGENCER, August 14, 1934 — Page 9, Col. 8. C.L.S.

STUDY OF TWO BULLETS
MAY SOLVE KILLING

Luke S. May Will Compare
Pellets From Griffis' Gun
With Those Which Slew Donlan.

TWO BITS OF LEAD AND THE MICROSCOPE OF CRIMINOLOGIST LUKE S. MAY

MAY SOLVE THE KILLING OF POLICE SERGEANT JOHN DONLAN, IN HIS HOME LAST MAY.

THE BULLETS, FROM THE GUN OF A LOS ANGELES SUSPECT, WILL BE TURNED OVER TO MAY THIS MORNING BY CHIEF DEPUTY PROSECUTOR EMMETT G. LENIHAN.

BY THEIR MINUTE MARKINGS, MAY WILL DETERMINE WHETHER THEY CAME FROM THE SAME GUN AS THE SHOT THAT KILLED DONLAN WHILE HE STRUGGLED WITH A BURGLAR HE HAD SURPRISED IN HIS HOME.

The bullets were received yesterday by Chief of Detectives William E. Justus from the Los Angeles police who are holding Edward Griffis, twenty-two. Griffis, police say, has admitted four [127] burglaries here at the time of the Donlan shooting but denies any connection with that killing. Captain of Detectives Ernest Yoris and Lieut. M. C. Pease arrived in Los Angeles yesterday to question Griffis further.

Griffis is held in the south on suspicion of robbery and suspicion of attempt to commit murder. He is accused of holding up a theatre there in June, escaping with $400 and to have fired a shot at the proprietor of a coffee shop he held up the same month.

THE SEATTLE DAILY TIMES, #6, August 15, 1934 — Page 4, Col. 1. H.R.

LOSSES REACH MILLIONS AS FIRE SEARS FORESTS

Losses continued to mount into the millions of dollars today as forest fires ate deeper into valuable timber of central Idaho and Northern California. After taking two lives Monday, the blaze in the Selway National Forest of Central Idaho swept through 20,000 acres of timber yesterday as thousands of workers stood by helpless.

The area swept in the Selway burn yesterday is equal to that estimated to have caused a million-dollar loss in the Colvill National Forest of Washington last week.

Four Thousand men are ON THE FIRE LINES TODAY IN THE SELWAY AND CLEARWATER NATIONAL FORESTS OF IDAHO. THE CLEARWATER BLAZE SWEPT THROUGH 8,000 ACRES YESTERDAY, *according to the Associated Press,* AND AIRPLANES ARE PREVENTED FROM TAKING IN GOOD SUPPLIES TO THE FIGHTERS BECAUSE OF LOW HANGING SMOKE SCREENS FROM THE FIRE OBLITERATED EMERGENCY SUPPLIES.

MEANWHILE, WASHINGTON'S FORESTS ARE CLEAR OF ANY DANGEROUS FIRES, LOCAL FOREST SERVICE OFFICIALS RE-

PORTED. HAZARDOUS CONDITIONS STILL EXIST IN THE TIMBER WHICH IS TINDERDRY.

THOUSANDS OF ACRES OF TIMBERLAND NEAR WEAVERVILLE IN NORTHERN CALIFORNIA WERE BURNED OVER YESTERDAY AND MORE TIMBER WAS THREATENED TODAY AS 500 CIVILIAN CONSERVATION CORPS WORKERS FROM SAN FRANCISCO FOUGHT THE WIND FANNED BLAZE.

WIND WAS THREATENING TO PUSH OUT OF CONTROL THE FIRE STARTED BY LIGHTNING NEAR JACKSON IN NORTHWESTERN WYOMING. HUNDREDS OF MEN RUSHED TO THE FIRE LINE.

THERE WILL BE NO RAIN IN THE NORTHWEST TODAY OR TOMORROW TO ALLEVIATE THE FOREST FIRE DANGER, Weather Bureau officials forecast.

Seattle and vicinity and Eastern WASHINGTON WILL REMAIN FAIR TONIGHT AND TOMORROW, with no change in temperature. Yesterday's maximum of 78 degrees in Seattle was the highest since August 1. MAXIMUM TEMPERATURES OF 92 DEGREES WERE REPORTED FROM Spokane, WENATCHEE AND YAKIMA YESTERDAY. [128]

SEATTLE POST INTELLIGENCER, August 15, 1934 — Page 1, Col. 8. C.L.S.

U. W. GIRL GRADUATE
LEAPS TO DEATH OFF
AURORA SPAN: TRAGEDY
ENDS DAY'S SEARCH.

Miss Naomi Keister
Plunges 200 Feet
into Lake

DESPONDENT

Examination Failure
Blamed; Sought Since
Morning.

SOBBING BITTERLY OVER THE LIFE SHE WAS LEAVING BEHIND HER, MISS NAOMI KEISTER, UNIVERSITY OF WASHINGTON GRADUATE AND BRILLIANT YOUNG CONCERT PIANIST, CLIMBED OVER THE RAIL OF THE AURORA BRIDGE YESTERDAY AFTERNOON AND PLUNGED TO THE WATER 200 FEET BELOW.

SHE GASPED OUT HER LIFE A MOMENT LATER IN THE GRASP OF CLANCY EDGAR, WHO WAS ROWING WITH HIS SMALL DAUGHTER IN LAKE UNION NEAR THE BRIDGE AND SAW THE BODY IN THE LAST FEW FEET OF ITS METEORIC FLIGHT.

THE TRAGEDY CULMINATED A DAY OF SEARCH FOR MISS KEISTER, WHO DISAPPEARED YESTERDAY MORNING FROM THE SEATTLE GENERAL HOSPITAL, WHERE

SHE HAD BEEN TAKEN IN A STATE OF NERVOUS EXHAUSTION INDUCED BY OVERWORK AND STUDY TO PASS A FEDERAL CIVIL SERVICE EXAMINATION.

SHE HAD passed the mental examination for assistant examination clerk with the civil service commission in Washington, D. C., but had just been notified by telegraph that she had failed in her physical examination.

Monday evening she was taken to the hospital for a rest that physicians said would correct the physical defects that caused her rejection. Yesterday morning she left unannounced and apparently wantered about the city for a day until she made up her mind to ring down the curtain on the promising life that unfolded before her.

Miss Keister was a graduate of the 1932 class of the University, where she was an honor student and won admission to Phi Beta Kappa honorary fraternity.

She was a member of the Ladies' Musical Club auxiliary and had won recognition as a concert pianist.

So far as could be determined by Chief Deputy Coroner W. H. Corson and his deputy Carl Keyes, no one actually saw the girl leap from the bridge.

Although the spectacular plunge occurred at 5 o'clock an hour when the Aurora bridge is usually thronged with homeward speeding cars, there was an unusual lull in traffic at the time, and the only persons on the bridge near Miss Keister were Mrs. G. B. Nyhagen of 1619 8th Ave., and her two small children.

Mrs. Nyhagen was walking south across the bridge when she passed Miss Keister walking north. The girl was weeping as she passed. Soon Mrs. Nyhagen was aware of someone approaching behind her and drew her children to her to let them pass.

She glanced over her shoulder and saw Miss Keister retracing her steps toward the highest point of the bridge over the water and clear of the log booms that floated below the northern portion of the bridge.

As Mrs. Nyhagen looked back, the girl slowed down. Twice she [129] looked back and twice the girl stopped. The third time Mrs. Nyhagen looked she had disappeared.

Puzzled for a moment, Mrs. Nyhagen glanced over the side and far below saw the form of the girl beside Edgar's rowboat.

The body had missed the log booms by a scant yard.

Dr. Corson discovered that the girl's parents, Mr. and Mrs. C. Louis Keister, of 4510 Thackeray Pl., had reported her missing to Mrs. Sylvia Hunsicker of the missing persons bureau at police headquarters soon after she left the hospital.

With Miss Keister's younger sister, Inez, they came to see Mrs. Hunsicker last night while the loved one they sought was lying unidentified in the county morgue.

From the description she had, Mrs. Hunsicker believed that the dead girl was Miss Keister and a few moments later the Keisters confirmed their fears.

THE BELLINGHAM HERALD, August 15, 1934, A. M. — Page 3, Col. 5. H.R.

"Y" WILL CLOSE TANK
UNTIL EPIDEMIC SCARE
IS OVER IN BELLINGHAM

As a precautionary measure and in a spirit of co-operation with city health officials who warned Tuesday of a POSSIBLE SPREAD OF THE DREADED INFANTILE PARALYSIS EPIDEMIC IN BELLINGHAM, M. A. ORPHAN, PHYSICAL DIRECTOR OF THE Y. M. C. A. ANNOUNCED THAT THE association's SWIMMING TANK WILL BE CLOSED UNTIL *the present scare is over.*

Two cases were reported in Bellingham, and a warning issued for parents to keep their children away from bathing beaches, summer resorts and public places.

THE SEATTLE DAILY TIMES, #6, August 16, 1934 — Page 1, Col. 7 C.L.S.

FISHERMEN ON COLUMBIA
STRIKE OVER PRICE CUT

By Associated Press

ASTORIA, OR., AUG. 16—*Not a fishing boat was in operation* on the Columbia River this morning, though salmon were running at a rate that would make record catches commonplace.

THE LONG PENDING STRIKE OF COLUMBIA RIVER GILL NETTERS AND CANNERY WORKERS WENT INTO EFFECT LAST NIGHT, despite rumored last-minute protests from

some of the fishermen. THE FISHERMEN'S UNION VOTED LAST WEEK TO STRIKE WHEN THE CANNERY PRICE FOR SALMON WAS REDUCED FROM 6 TO 4 CENTS A POUND. After delaying since Sunday, packers last night lowered the price in the face of the strike threat, and the walkout followed.

Some 4,000 men, including fishermen and cannery employers, were affected, and losses to fishermen alone promised to mount to about $400,000. Only eight days of fishing remain before the close of the summer season, and packers said last night they doubted if a settlement could be made.

An offer by Gov. Julius Meier to send the State Conciliation Board to Astoria to attempt a settlement is believed to have been refused by the packers. [130]

SEATTLE POST INTELLIGENCER, August 15, 1934 — Page 1, Col. 2. C.L.S.

MAYOR SMITH RECALL FILED; BASED UPON STRIKE POLICY; 21,000 SIGNATURES CLAIMED

Action Sponsored by Law and Order League.

CHARGE MADE

City Unprotected in Recent Crisis, Signers Say

PURPORTING TO BEAR 21,000 SIGNA-

TURES, PETITIONS CALLING FOR THE RECALL OF MAYOR CHARLES L. SMITH WERE FILED YESTERDAY AT THE CITY COMPTROLLER'S OFFICE BY A COMMITTEE HEADED BY KENNETH T. CAPLINGER, WHO SAID HE REPRESENTED THE 'SEATTLE LAW AND ORDER LEAGUE."

JAMES P. KELLY, CHIEF REGISTRATION CLERK, ACCEPTED THE PETITIONS AND NUMBERED THEM, BUT SAID HE WOULD NOT BEGIN CHECKING THE SIGNATURES UNTIL HE HAD FAIRLY DEFINITE ASSURANCE THAT THERE WERE ENOUGH OF THEM TO FORCE AN ELECTION. HE POINTED OUT THAT A RECALL ELECTION CANNOT BE CALLED UNLESS THE SIGNATURES EQUAL AT LEAST 25 PERCENT OF THE VOTES CAST FOR THE OFFICE AT THE LAST ELECTION — WHICH IN THIS CASE WOULD BE 27,164.

Caplinger said that more than enough signatures would be filed in the immediate future, estimating that from forty to forty-five thousand had actually been obtained.

He asserted that 8,000 signatures are now being checked in the league offices in the Henry Building, explaining that four persons had been employed for this purpose to eliminate possible duplications. In addition to these, he said, there are thousands

of signatures on petitions which have not yet been turned in to the league headquarters.

The recall charges are based on Mayor Smith's policy in the recent waterfront strike. The additional allegation is made that he violated the city charter by promising Albert E. Pierce the appointment as superintendent of railways in return for political services.

The charges recite that, in withdrawing officers from their regular beats for waterfront strike duty, the mayor left the rest of the city without adequate police protection.

Following the filing of the petitions, Mayor Smith issued a statement attributing the recall movement to radical leaders and declaring his actions during the waterfront crisis and at all other times have been governed by his duty to see that the law is enforced and to conduct his administration "for the greatest good of the greatest number."

The mayor said he will leave this morning for a week's vacation trip to Holmes Harbor where he will indulge his favorite pastime of fishing.

The ballot synopsis was prepared some time ago on the advice of Corporation Counsel A. V. Van Soelen, who, without passing on the legality of the charges, told the comptroller that, under the law, he was compelled to do so when any citizen filed charges against an elected official, accusing him of malfeasance or misfeasance in office. [131]

THE SEATTLE DAILY TIMES, #6, August 16, 1934 — Page 2, Col. 3 H.R.

OFFICER'S WIFE SHOOTS OFFICER; ALL A MISTAKE

POLICE PATROLMAN ROLLO WILSON, 47 YEARS OLD, WAS SHOT THROUGH THE RIGHT LEG LAST NIGHT ABOUT 10:30 O'CLOCK BY MRS. LAURA WILSON, WIFE OF POLICE SERGEANT GEORGE W. WILSON, AT HER HOME AT 4459 HUDSON ST.

MRS. WILSON, 60 YEARS OLD, SAID SHE MISTOOK PATROLMAN WILSON FOR A PROWLER. HE SAID HE WAS ON HIS WAY TO INVITE HER TO HAVE ICE CREAM AND CAKE WITH A GATHERING OF NEIGHBORS.

THE WILSONS ARE NOT RELATED.

Patrolman Wilson, who lives at 5223 Empire Way, told Detective Lieut. Ernest Winter that he was visiting last evening at the home of Mr. and Mrs. Harry G. Gustagson, 4459 Hudson St.,—several doors away from Sergeant Wilson's home.

Shortly after 10 o'clock, as the Gustafson's were about to serve refreshments, Mrs. Gustafson suggested that Patrolman Wilson invite Mrs. Wilson to join them. Sergeant Wilson was away on a short vacation to Mount Baker.

Patrolman Wilson said he went to Mrs. Wilson's front door and knocked. Receiving no answer, he went to a window and peered in, thinking that Mrs.

Wilson had gone to sleep. Seeing no one through the window, Wilson started to walk away, he said.

Suddenly Patrolman Wilson heard a shot behind him and felt the bullet strike his leg below the knee. The Gustafsons heard the shot and rushed him to Harborview County Hospital in their automobile. The wound is believed not serious.

Mrs. Wilson told Lieutenant Winter she had been dozing and awakened to see a shadow at the window.

"My husband has always told me to shoot if I ever saw a prowler while he was away," Lieutenant Winter quoted Mrs. Wilson as saying. "I took a pistol and fired at the retreating shadow.

"I didn't know I had hit anyone, I ran to the telephone and called headquarters. A few moments later I learned it was Patrolman Wilson. It was just an accident and I'm sorry that he was hurt."

THE SEATTLE DAILY TIMES, #6, August 17, 1934 — Page 2, Col. 3 H.R.

IDAHO FORESTS CLOSED 7 MAJOR BLAZES FOUGHT

FEARING THAT HUGE LOSSES WILL RESULT FROM FOREST FIRES NOW THREATENING VALUABLE IDAHO TIMBER, GOV. C. BEN ROSS TODAY ORDERED THE CLOSING OF THOUSANDS OF ACRES OF FORESTS TO CAMPERS, AS MORE THAN 4,000 MEN CON-

TINUED TO BATTLE SEVERAL MAJOR IDAHO FIRES.

HIGH WINDS FANNED FLAMES IN THE SELWAY NATIONAL FOREST IN MONTANA STARTING NEW BLAZES. LUMBERJACKS FROM SPOKANE WERE RECRUITED TO BATTLE THE BLAZE, *the Associated Press reported.*

FOREST SERVICE OFFICIALS REPORTED THAT WASHINGTON'S TIMBER IS STILL CLEAR OF FIRES. FAIR WEATHER, WITH ABOVE NORMAL TEMPERATURES, ARE FORECAST BY THE WEATHER BUREAU, for Seattle and vicinity TOMORROW. [132]

THE SEATTLE DAILY TIMES, #6, August 16, 1934, Page 1, Col 6 C.L.S.

F. R.'S MOTHER RETURNS WITH TWEED FOR SON

Says England, France, Strong for U. S. President; Palace Nice

By Associated Press

NEW YORK, Thursday, Aug. 16.—With a bolt of tweed for her "boy, Franklin," MRS. SARA DELANO ROOSEVELT, MOTHER OF THE PRESIDENT, RETURNED TODAY FROM A TWO MONTHS TRIP TO EUROPE.

"I want him to make it up into a suit," she said as the liner Ile de France came up the bay. "I bought it in Scotland and it's a bargain. It cost just five pounds, but it's splendid tweed."

She also BROUGHT HER SON FIRST HAND NEWS THAT "ENGLAND AND FRANCE ARE STRONG FOR HIM."

"That's why they made such a fuss over me," she chuckled.

Did she know she had been hailed as "the greatest hit in Paris since Lindbergh" and "the most effective good-will ambassador this country has sent to Great Britain?"

"My, My! Did the papers say that?" the President's mother asked. "It takes the newspapers to say nice things."

The radiant 78-YEAR OLD LADY RECEIVED REPORTERS IN HER STATEROOM.

"I'm in *fine health and have had a good rest,*" she began after finding seats for several. "I've said everything else already.

"You see, I was traveling as a private citizen. I went mainly to be with my nephew and niece, Mr. and Mrs. Charles Fellowes Gordon, in Aberdeen, Scotland, and my sister, Mrs. Dora Delano Forbes, in Paris."

Asked about her chat with Queen Mary over the teacups at Buckingham Palace, she said: "Oh, we didn't talk about anything special. The King, of course, asked about Franklin. My son met him years ago.

"It was nice at the palace because we three were alone—much nicer than if I'd had to go with a crowd."

SHE PLANNED TO GO AT ONCE TO HYDE PARK AND GET THE HOUSE READY FOR PRESIDENT ROOSEVELT'S COMING.

"He hopes to arrive August 25," she said. "But I'm hoping he'll make it sooner." [133]

THE SEATTLE DAILY TIMES, #6, August 17, 1934—Page 2, Col. 6. H.R.

WOMAN KILLED, 3 HURT, 2 HELD IN AUTO CRASH

One person was killed, three others were injured seriously and a Seattle man and woman were jailed in a Pacific Highway automobile collision two miles north of Tacoma last night.

MISS MARY FLEISHMAN, 29 YEARS OLD, OF FIFE, DIED ON THE WAY TO A TACOMA HOSPITAL. HER FATHER AND MOTHER, MR. AND MRS. FRANK FLEISHMAN, AND A FRIEND, JOE STEINER, 16 YEARS OLD, SUFFERED HEAD AND POSSIBLE INTERNAL INJURIES. THEY WERE IN A TACOMA HOSPITAL TODAY.

The Associated Press reported GUY F. KIRKPATRICK 45 YEARS OLD OF 8108 ROOSEVELT WAY, SEATTLE, AND HIS COMPANION, MRS ALICE HIBBERT, 42 YEARS OLD, WERE HELD IN THE PIERCE COUNTY JAIL, PENDING INVESTIGATION OF THE

ACCIDENT. KIRKPATRICK, DRIVER OF THE MACHINE THAT STRUCK FLEISHMAN'S, IS SECRETARY OF A CHEMICAL COMPANY.

OFFICERS SAID KIRKPATRICK'S AUTOMOBILE SWERVED AT HIGH SPEED, CRASHING INTO THE FLEISHMAN MACHINE ON THE OPPOSITE SIDE OF THE HIGHWAY.

THE SEATTLE DAILY TIMES, #7, August 18, 1934—Page 1, Col. 4 H.R.

FOREST FIRES IN NORTHWEST BURN FIERCELY

Thousands of Men Fight Flames in Wooded Lands of Idaho, Montana and Lower British Columbia

Thousands of men fighting costly blazes in Idaho, Montana and Southeastern British Columbia settled down to a busy week end today as fires continued to sweep unabated through thousands of acres of timber. No progress against any of the fires was reported yesterday.

Logging campers and miners fled in Eastern Idaho as a forest fire started by a careless smoker, swept through their camps.

Already having leveled more than 20,000 acres of timber in Central Idaho, the Selway National Forest blaze continued to burn as 4,000 men stood

by. Airplanes were rushing additional fighters to the fire line.

Residents on Kooteny Lake, near Nelson, B. C., were again preparing to leave their homes as fire threatened from Mount Nelson. THE FIRE HAS BEEN OUT OF CONTROL SEVERAL WEEKS.

A FIRE FROM THE NELWAY FOREST IN SOUTHERN BRITISH COLUMBIA THREATENED TO SWEEP ACROSS THE BORDER INTO WASHINGTON YESTERDAY, BUT WAS HALTED AS A UNITED STATES CREW JOINED THE CANADIANS IN SURROUNDING THE BLAZE.

WASHINGTON STILL IS CLEAR OF FIRES, FOREST SERVICE OFFICIALS REPORTED, ALTHOUGH VIGILANCE WILL BE INCREASED OVER THE WEEK END AS TOURISTS ENTER THE TIMBER. WEATHER here TOMORROW WILL BE FAIR, THE WEATHER BUREAU FORECAST. [134]

THE SEATTLE DAILY TIMES, #6, August 24, 1934—Page 1, Col. 6.

W.C.C.

CROWDS OF VISITORS SEE WATER CARNIVAL; GRAND BALL TONIGHT

Hilarious Pet Parade for Children Tops Afternoon Program; High School Swimmers Seek Crowns.

Hostess to thousands of visitors, SEATTLE TODAY UNFOLDED A WATER SPORTS PRO-

GRAM ON HER WORLD FAMOUS INLAND LAKES, THEN TURNED IN THE AFTERNOON TO A HILARIOUS PET PARADE FOR CHILDREN, AND PLANNED TO WIND UP THE SECOND DAY OF THE FOUR-DAY INTERNATIONAL POTLATCH WITH A GRAND BALL FOR QUEEN ROBERTA AND HER COURT IN THE CIVIC AUDITORIUM.

Ideal weather matched that yesterday when the Potlatch opened with one of the greatest parades in Seattle's history, and last evening, when about 5,000 persons saw the queen crowned as the climax to a pageant on the history of the Pacific Northwest.

Today's program opened with a band concert in Metropolitan Center at 11 o'clock. Other events on the schedule were: 1:30 p.m., high school swim meet at West Green Lake beach; 2 p. m. pet parade and costume party in Woodland Park; 2 p.m., Potlatch horse races at Longacres; 7:30 p.m. water carnival and regatta near Montlake Bridge; 8 p. m., "Pinkie", a three-act drama for children at the Moore Theatre; 8:30 p.m., "Pierre Patelin", a play in Meany Hall on the University campus, and at 9:30 p.m., the grand ball.

Tonight's aquatic program in the Lake Washington Ship Canal near the Montlake Bridge, will start with Helene Madison, Seattle's champion swimmer, giving exhibitions. Then more water will splash and outstanding swimmers from the Washington Athletic Club will dive and race.

With sea week dangling from his shoulders, Neptune and his court will float down the canal and a fancy diving and life saving program by the Seattle Life Saving Club will start.

Then come the Indians with their eleven-man canoes and varied program of canoe events—push-over races, tipover races, hurdle races and other exciting water sports.

The Seattle Yacht Club and Queen City Yacht Club will give a parade through the canal. The fete will be climaxed with fireworks.

Tomorrow will see events starting in the early morning and continuing throughout the day and night. At 9 o'clock in the morning, leading Northwest marksmen will compete in the pistol and revolver meet at Fort Lawton.

The regular band concert will be given at 11 o'clock in Orient Square in Metropolitan Center.

In the afternoon starting at 2 o'clock, leading outboard pilots will compete at Green Lake. Horse races at Longacres will start at the same time.

At 2:30 o'clock, Northwest archers will enter the Potlatch Archery Tournament at the Washington Boulevard Archery Range, Lake Washington Boulevard at Boyer Avenue. Another performance of "Pinkie" will be given at 3 o'clock.

The day's events will end with a new "Evergreen Empire" pageant program starting at 8 o'clock in the Civic Stadium and free street dancing from 9 o'clock until midnight in the Denny regrade district. [135]

THE SEATTLE DAILY TIMES, #6, August 24, 1934—Page 1, Col. 3 W.C.C.

COOLER DAYS FORECAST, BUT FIRES MENACE

Seattle Experiences Night of High Temperatures; Army of Fighters Keeps Watch on Spreading Flames

ALTHOUGH "SOMEWHAT COOLER" WEATHER IS FORECAST FOR WESTERN WASHINGTON TOMORROW by Meteorologist Lawrence C. Fisher, THE FIRE SITUATION REMAINED SERIOUS TODAY, WITH NUMEROUS INCENDIARY FIRES BURNING IN LEWIS COUNTY AND WITH A DOZEN GRASS AND BRUSH FIRES IN A FEW MILES OF SEATTLE.

TEMPERATURES DURING THE FORENOON TODAY WERE SLIGHTLY BELOW THOSE OF YESTERDAY. A MAXIMUM OF 87 DEGREES WAS RECORDED LATE YESTERDAY AFTERNOON AND THE UNUSUAL WARMTH PERSISTED LATE IN THE NIGHT.

The temperature at 11 o'clock last night was 75 degrees, 4 degrees above the average maximum daytime temperature for August 23. So don't worry about insomnia if you couldn't sleep last night. It was the heat.

"The peak of this present heat period seems to have passed, for a day or two anyway," Mr. Fisher

said. "We cannot be sure this time of year, however, that cooler weather will stay. We have had temperatures as high as 91 on August 31 and as high as 87 in September."

NO RAIN IS IN PROSPECT, Mr. Fisher said.

Seattle 87-degree maximum yesterday compared with Spokane's 84, Yakima's 92, Wenatchee's 90, Portland's 93 and Medford's 95.

A small brush fire burned a few blocks from the Riverton Sanatorium late yesterday, but was controlled. Another fire, in the same vicinity but farther from the sanatorium, was being fought today.

The brush fire just south of the city, near 57th Avenue South still was burning today, after endangering several homes late yesterday.

Clayton Courtright, district state fire warden here, reported that a few farm houses were endangered by a 150-acre brush fire east of Renton, and that another fire was burning near Springbrook, about four miles north of Kent.

A grass and brush fire burned along a four-mile front near South Tacoma. It drove several persons from their homes yesterday, but was believed controlled today without loss of any houses, according to the United Press.

The United States Forest Service reported Snoqualmie National Forest free of fires. The eastern part of the forest, in the Natches vicinity, was closed today to all persons unless they register with forest officials. The western part of the forest still is open.

The Seattle Fire Department extinguished forty-

one small brush and grass fires in the city yesterday. Damage was nominal.

The Washington Forest Fire Association reported six incendiary fires in Lewis County. Two were near Mendota. Others were near Ajlune, Minnehhaha, Lake Creek and Curtis Hill.

A 350-acre fire near Wildwood, Southern Lewis County, was reported under control as was a 1,000-acre fire near Lake Stevens, Snohomish County. The fire association lauded the work of Civilian Conservation Corps men in combatting the fires.

Three fires, all apparently under control, were reported in Clallam County. [136]

THE SEATTLE DAILY TIMES, #6, August 24, 1934—Page 4, Col. 4 W.C.C.

O'DAY IS NAMED CHEF DE GARE OF LEGION 40 AND 8

By Associated Press

SPOKANE, Friday, Aug. 24.—THE AMERICAN LEGION STATE CONVENTION ball which officially started rolling yesterday with the arrival of National Commander Edward A. Hayes, had gained momentum this morning with close to *1,500 delegates registered.*

Except for the official convention dance last night, the address yesterday by Commander Hayes and the formal opening of the convention, it was a day in which the smaller groups did most of the "convening."

THE 40 and 8, FUN DEPARTMENT OF THE LEGION, ELECTED R. M. O'DAY OF PULLMAN, GRAND CHEF DE GARE to succeed E. C. Knoebel of Wenatchee.

Others elected were grand chef de train, L. D. Boetcher, Vancouver; grand conductor, George A. Allen; grand garde de la porte, Neal Henley, Bremerton; Seinor grand drapeau, Ben Fullenwiger, Seattle; junion grand drapeau, Lew Wolf, Seattle; grand historian, Roger Matson, Yakima; grand aumonier, James Osborne, Tacoma; cheminet nationale, E. C. Knoebel, Wenatchee; sous cheminot nationale Herbert G. West, Walla Walla; grand cheminot, Les Silverman, Skamokawa, and Larry Collins, Everett.

The colorful event of yesterday was the 40 and 8 stunt parade. Every other stunt seemed to be a bugle corps that outplayed the one ahead of it. Buglers played in harmony and in different keys and drummers hammered out complicated rhythms —aggrandized versions of the old marches soldiers are supposed to march to.

THE SILVER LOVING CUP FOR HAVING THE LARGEST NUMBER OF PARTICIPANTS IN THE PARADE WENT TO WENATCHEE, 47 MEMBERS. In order were BELLINGHAM, 45; University Post, Seattle, 42; Tacoma, 38.

For the most comic drum and bugle corps, a cup was awarded the Tacoma post, with honorable mention to Mount Vernon.

Yakima County won the prize for the best replica of a French box car, which displayed a miniature of Emperor Napoleon's coach.

For the most comic person, a silver water pitcher went to Joe Ross of Port Angeles, representing "La Belle de Armentieres" or "Red Hot".

In the Auxiliary contests, West Seattle drill team won first place, with Bremerton second, Port Angeles won the singing contest.

TACOMA AND HOQUIAM POSTS ARE MAKING STRONG BIDS FOR THE honor of entertaining the *1935* conventions. Tacoma attracted the most attention with a red robot escorted by two fancy drummers, walking jerkily about the streets with the word "Tacoma" in large letters. The "robot" proved to be Wolf Burrows.

The Longview drum and bugle corps entertained Commander Hayes with a march, "To The Commander," written in honor of Hayes by Knute Green, leader and instructor of the Longview corps.

A movement for annual reunions of the old 2nd Washington Regiment which saw service overseas in the World War, was started at a dinner last night attended by about 150 former members of the regiment. Among those signing up for next year's reunion were Gen. James A. Drain, former national commander of the Legion, Brig. Gen. Maurice Thompson, Adjutant General of the Washington National Guard, Brig. Gen. Paul Weyrauch, Walla Walla and Reno Odlin, Olympia. [137]

SEATTLE POST INTELLIGENCER, August 27, 1934, Page 3, Col. 1. C.L.S.

BIG OIL CARRIER TAKEN IN SOUND ON NRA CHARGE

Papoose's $350,000 Fuel Stock Produced in Violation of Quota Government Contends

Intercepted by a deputy United States Marshal aboard a coast guard cutter as she headed up Puget Sound early yesterday morning, the tanker Papoose was forbidden by federal court order from landing her $350,000 cargo of Texas gasoline.

Deputy Marshal Michael (Spud) Green, who left on the cutter Arcata here at midnight, boarded the Papoose at 3:30 A.M. and served Capt. K. O. Jacobson with a complaint in equity and a temporary restraining order that had been issued a few hours previously by Federal Judge John C. Bowen.

The tanker then proceeded to Tacoma, where she anchored at 7 a.m., and where she is expected to remain pending the outcome of a hearing in Tacoma federal court next Saturday as to whether the restraining order shall be made permanent.

The government contends that the gasoline aboard the Papoose was produced in violation of established quotas under the NRA petroleum code, and therefore cannot be sold.

Shortly after Judge Bowen had issued the restrainer upon motion of United States Attorney J. Charles Dennis and John Ambler, his chief assist-

ant, Deputy Marshal Green boarded the Arcata here at midnight.

He found the Papoose off Point No Point three hours later.

At 1 a. m. yesterday Deputy MARSHALL HORACE DE LINE, IN TACOMA, SERVED SIMILAR PAPERS ON ANOTHER DEFENDANT, THE FLETCHER OIL COMPANY OF BOISE, IDAHO, THROUGH ITS LOCAL MANAGER, MERRILL C. BRADSHAW. AMBLER SAID YESTERDAY THE GASOLINE, 69,000 BARRELS OR ABOUT 3,500,000 GALLONS, IS CONSIGNED TO THE FLETCHER OIL COMPANY.

PLAINTIFFS IN THE EQUITY SUIT ARE THE UNITED STATES AND HAROLD L. ICKES, SECRETARY OF THE INTERIOR. THE COMPLAINT IS VERIFIED BY ASSISTANT DISTRICT ATTORNEY AMBLER, AND J. HOWARD MARSHALL, MEMBER OF THE PETROLEUM ADMINISTRATIVE BOARD.

LANDING AND DISTRIBUTION OF THE CARGO OF GASOLINE, ALLEGED TO HAVE BEEN "ILLEGALLY PRODUCED, REFINED AND TRANSPORTED IN INTER-STATE COMMERCE," *will "defeat the declared purpose of the National Industrial Recovery Act,"* IT IS DECLARED IN THE COMPLAINT.

Meanwhile, the oil administration in Washington, D. C., set out on the trail of another tanker, the Republic, to make sure that none of her two million gallons is illegal. The Republic had just sailed from Texas City, Tex., bound for Coast ports, and Sec-

retary Ickes said if investigation indicated any of her cargo was illegal, immediate efforts would be made to bar her from discharging, according to an Associated Press dispatch. The Republic is expected at Seattle, Portland, or San Francisco, the dispatch said. [138]

THE BELLINGHAM HERALD, August 27, 1934—Page 1, Col. 4. C.L.S.

HITLER MAKES BID

Saar Territory Scene of Impressive Demonstration.

EHRENBREITSTEIN, Germany, Aug. 27.—(AP)—*The Saar territory, soon to participate in a momentous plebiscite, had the word of Chancellor Hitler today* THAT "THE WHOLE GERMAN NATION IS BEHIND YOU."

More than half a million persons jammed together here yesterday for a great demonstration of loyalty to the Saar and to give Hitler a tremendous ovation.

IT IS INEVITABLE, HITLER SAID, THAT THE REICH REGION WOULD VOTE JANUARY 13 TO RETURN TO GERMANY, IN PREFERENCE TO REMAINING UNDER THE MANDATE OF THE LEAGUE OF NATIONS OR BECOMING A PART OF FRANCE. He said this would improve Franco-German relations.

"The Saar is the greatest problem now separating France from us," he asserted. "We shall not give

up the conviction that the other side eventually will view this problem as it really is and that France will not deny her assistance in solving it.

"There is on reason whatever why two great nations should remain forever hostile on this issue."

"Be of good cheer," der fuehrer advised residents of the Saar. "The whole German nation is behind you. When the bells ring January 14 heralding the joyful event may they also ring in happier times for two nations which once faced each other as enemies."

Despite rumors that he fears assassination, Hitler strolled unconcernedly through the huge crowds before his speech, greeting many friends.

THE SEATTLE DAILY TIMES, #6, August 27, 1934—Page 1, Col. 6 C.L.S.

4 INJURED IN $50,000 FIRE AT WOODLAND PARK

Spreading terror among animals in the nearby *Woodland Park Zoo,* fire swept through the recreation center at Phinney Avenue and North 55th Street, across the street from Woodland Park, LATE LAST NIGHT. FOUR FIREMEN WERE INJURED, NONE SERIOUSLY.

FIRE CAPT. M. W. McINTOSH ESTIMATED THE LOSS AT $50,000. THE OWNERS SAID IT WAS PARTLY COVERED BY INSURANCE. THE ROLLER SKATING RINK, MERRY-GO-ROUND, FERRIS WHEEL AND TWO LUNCH ROOMS WERE DESTROYED.

ANIMALS IN THE ZOO, FRIGHTENED BY THE FIRE, UTTERED WEIRD SOUNDS AS THEY MILLED ABOUT IN THEIR CAGES AND PENS, UNABLE TO FOLLOW THEIR INSTINCT TO FLEE FROM FIRE. NONE OF THE ANIMALS WAS ENDANGERED, HOWEVER.

Lack of water pressure, because of the high elevation, hampered firemen. Six engine companies and three truck companies fought the fire. Three alarms were turned in.

Captain McIntosh and his aides were investigating today to determine the cause of the fire, which was discovered by a group of boys at 11 o'clock. The flames, visible from Capitol Hill, Queen Anne Hill and the North End, attracted hundreds of spectators.

Traffic in Phinney Avenue was blocked for an hour.

Explosion of a sixty-gallon barrel of gasoline a few minutes [139] after the fire started showed flames fifty feet in the air and spread the fire.

Roy Ginnold, a neighbor, 5311 Greenwood Place, said his son and other youngsters discovered the fire and called him. Ginnold rushed in and found that the fire had started in a pile of boards near the Ferris wheel.

Ginnold tried to put out the blaze, but was driven away by the heat and escaped by climbing over the Ferris wheel supports and over the south wall of the

building beside the wheel. The gasoline barrel exploded a few minutes later.

Mrs. George E. Vincent, wife of the owner of part of the recreation center, said she had locked up the place an hour before the flames were discovered. She said she had no idea how they started.

The skating rink and one lunch room were owned by John Manos.

The fire spread rapidly among the frame buildings, with flames reaching more than fifty feet in the air. Sparks darted twenty feet in the air from transmission boxes on nearby poles as the fire burned electric wires leading into the amusement building.

Lineman disconnected other electric wires to protect spectators.

Battalion Chief McCombs said pressure, always low in the park district, was reduced slightly last night because of the amount of water used by residents in sprinkling lawns.

The fire, spread by the gasoline, was unusually hot. Firemen, unable to get close to the blaze because of the heat, were hampered by the lack of water pressure and were unable to beat down the flames from a distance.

Neighbors springled their roofs with garden hoses as sparks showered down from the blaze.

One third of the city's fire apparatus was put in motion by the three alarms. Six engine companies and three truck companies battled the blaze, while other apparatus moved to the district for protection in case of other fires.

Chief Claude W. Corning, Battalion Chief Leo McCombs and Capt. Harold Fuson, acting battalion chief, directed the firemen.

The firemen injured included William A. Stone, 5606 First Ave., N. W., wrenched back; Ralph L. Forbes, 8327 13th Ave., N. W.; Herbert J. Miller, 3919 Whitman Ave., and Emil M. Tyron, 4338 Seventh Ave. N. E., who suffered minor injuries from stepping on nails or splinters. [140]

SEATTLE POST INTELLIGENCER, August 29, 1934—Page 1, Col. 3 C.L.S.

CCC WORKER KILLED FIGHTING FOREST FIRE IN CASCADES

Improved Climatic Condition Believed Terminating Peril for Season.

Forest fires claimed their first life in Washington State for this season yesterday.

Struck on the head by a blazing snag which crashed in a shower of sparks as he was fighting a forest fire, John Russell Ballinger, twenty-seven, a C C C WORKER, DIED YESTERDAY AT CAMP BOULDER, ON THE EASTERN SLOPE OF THE CASCADE MOUNTAINS, according to an Associated Press dispatch. The victim's mother lives in Tacoma.

MEANWHILE, WITH THE FOREST FIRE MENACE APPARENTLY DEFINITELY

CHECKED IN WESTERN WASHINGTON, PROGRESS IN THE BATTLE AGAINST RAGING FIRES IN ALL PARTS OF THE NORTH WEST WAS REPORTED in Associated Press dispatches.

THE IMPROVEMENT IN FIRE WEATHER CONDITIONS LED GOV. CLARENCE MARTIN YESTERDAY TO CANCEL HIS ORDER SUSPENDING ALL STATE FIRE PERMITS. T. S. GOODYEAR, STATE SUPERVISOR OF FORESTRY, ANNOUNCED THAT FIRE WARDENS HAVE AGAIN BEEN INSTRUCTED TO ISSUE BURNING PERMITS TO ENABLE FARMERS AND SETTLERS TO CONTINUE LAND CLEARING OPERATIONS, CONDITIONS ARE STILL TOO DANGEROUS HOWEVER, TO PERMIT BROADCAST SLASH BURNING, HE SAID.

With a heavy mist hanging over the city and the temperature rising only to 68 degrees here, Seattle firemen had their first respite from grass and brush fires in several days.

In the Inland Empire, fire fighters were making excellent progress against all major blazes despite an increasing fire hazard caused by low humidity and continued high temperatures.

Nearly 5,000 men were trenching the Pete King Creek, McLendon Peak, Martin Creek and other fires in the Selway national forest and the Avery fire in the St. Joe national forest, all in North Central Idaho. Progress also was reported in the battle

against the Grouse Creek fire in the Kaniksu forest of extreme North Idaho.

Because of the increasing fire hazard in that region, however, four more North Idaho and Western Montana national forests were ordered closed yesterday to visitors without permits. All national forests in North Idaho and several in Western Montana are now closed. Those affected by yesterday's order were the Coeur d'Alene, St. Joe and Nez Perce Forests in North Idaho and the Cabinet in Western Montana. [141]

THE SEATTLE DAILY TIMES, #6, September 3, 1934—Page 1, Col. 2 C.L.S.

EXPENSIVE RESIDENCES SAVED BY NEIGHBORS

Scantily Clad Bucket-Brigade Battles Morning Blaze; No One at Home; Woman Turns in Alarm

FIRE DESTROYED THE $40,000 HOME OF M. B. McNAIR, SEATTLE INSURANCE DEALER AT EVERGREEN POINT, ON LAKE WASHINGTON NORTH OF MEDINA, ABOUT 3:15 O'CLOCK THIS MORNING, BUT A BUCKET BRIGADE OF SCANTILY CLAD NEIGHBORS PREVENTED THE BLAZE FROM SPREADING TO OTHER FINE HOMES NEARBY.

THE FIRE, ALMOST DIRECTLY ACROSS THE LAKE FROM MADISON PARK, WAS

VISIBLE FROM MANY POINTS ON SEATTLE'S LAKE WASHINGTON FRONT.

No one was in the McNair home and the fire had gained headway before Mrs. Clinton T. Fleetwood, a neighbor, was awakened by the crackling flames.

Mrs. Fleetwood aroused her daughter, Mary Ann, 8 years old, who leaped out of bed and ran in her night clothes to adjoining homes to spread the alarm.

Neighbors said the McNair home was furnished with expensive Oriental rugs, tapestries and drapes. The fire had gained such headway, however, that nothing was saved. Cause of the fire was not determined.

Dr. Fleetwood, a Seattle dentist, and H. W. Baker, Kirkland postal employe, also living nearby, manned garden hoses as the fire spread to the dry shrubbery and underbrush. Other neighbors carried water in buckets from the lake to help halt the spread of the flames. Dr. Fleetwood and Baker were burned slightly.

Explosion of an oil tank in the basement of the house sent flames seventy-five feet in the air, but no one was hurt.

Neighbors said several nearby homes probably would have been dstroyed had the fire spread into brush and timber in the rear of the McNair home. The house was on the lake front.

The Fleetwoods, whose town residence is at 2121 Hamilton St., have a summer home at the beach.

The Medina telephone operator notified all residents of the community after the first alarm and

also notified the Harbor Patrol here. The Ballard patrol boat was dispatched, but did not arrive until after the fire.

The McNair's grown son, John, who lives nearby, said his parents, his brother, Malcolm, 14, and his grandmother, Mrs. Helen Raglan, were at Copalis Beach for the week-end. The McNairs purchased the seven-room house eight years ago and had done extensive remodeling. [142]

THE SEATTLE DAILY TIMES, #6, September 3, 1934. Page 1, Col. 3 C.L.S.

COAST GUARD CUTTER WINS IN STORK RACE

Arcata Makes Emergency Run to Kingston, Across Sound in Early Morning to Bring Woman to Hospital.

Into the dawn this morning Uncle Sam's Coast Guard ran a race with the stork and won.

ANSWERING A CALL FROM KINGSTON, ON THE WEST SHORE OF PUGET SOUND IN NORTHWESTERN KITSAP COUNTY, THAT A WOMAN EXPECTING A BABY MUST BE TAKEN TO A HOSPITAL, THE CUTTER ARCATA STEAMED OUT OF ELLIOTT BAY SHORTLY AFTER 2 O'CLOCK THIS MORNING AND PICKED UP MRS. ELANOR WENDELL AT KINGSTON.

THE SHIP RETURNED TO SEATTLE

SHORTLY BEFORE 5 O'CLOCK. MRS. WENDELL WAS RUSHED TO PROVIDENCE HOSPITAL IN A TAXICAB. SHE AWAITED ARRIVAL OF THE CHILD THIS FORENOON, HER PHYSICIAN, DR. CHARLES D. SHANNON, REPORTED.

Mrs. Wendell's husband is John Wendell, employe of the Puget Sound Power & Light Company at Kingston. Mrs. Wendell is 27 years old. The Wendells have another child.

THE SEATTLE DAILY TIMES, *#6,* September 3, 1934—Page 1, Col. 3 C.L.S

CHAPLIN WEALTHIEST STAR:

GRETA GARBO HAS $80 CAR

Many of Hollywood "Big Shots" Reported by Tax Collector as Still Doing Fairly Well in Battling Hungry Wolf.

By Walter B. Clausen, Associated Press Staff Writer.

HOLLYWOOD, Calif., Monday, Sept. 3.—CHARLIE CHAPLIN *remains the wealthiest.*

Greta Garbo has an $80 automobile compared with Joan Crawford's $2,010 one.

Will Rogers is the largest landholder. Harold Lloyd has the costliest furniture.

These are some of the interesting facts about the private affairs of the "movie" folks gleaned by searchers of the records of the county tax collector and the county auditor.

All of the figures are assessed valuations. The actual market value or the estimated value by the owners may be higher.

The comedian who can't be moved to make a "talkie" after the use of a cane, derby, baggy pants and funny shoes raised him from poverty to riches, heads the Hollywood "movies" list on the assessments rolls with his property assessed at $3,279,230.

The figures show Chaplin to be the real investing prince of the screen, his stocks and bonds being listed at $3,051,210, to which he added solvent credits of $22,140, real estate of $170,840, furniture $4,680, and sundry other items, including automobiles at $3,230.

Greta Garbo's record on the assessment rolls is about AS SPARSE AS HER INTERVIEWS, which are nil.

The rolls show two things listed for the elusive Swede, who is reported to be getting a WEEKLY SALARY of $10,000. If that's her salary, where it goes the tax collecter does not know. The two items listed as her property are AN $80 AUTOMOBILE AND $55,100 [143] IN BONDS. The vigilant tax collector did learn that she has purchased another automobile and it soon will be on the rolls.

Will Rogers is known to the tax collector as William P. Rogers, landholder. A long list of excellent properties in Los Angeles County is found in his name, grossing an assessed valuation of $322,920.

Any real estate man, even if you are most skep-

tical about it, will soon convince you these properties are worth well over a million dollars. The homely film humorist is listed also as having solvent credits of $15,340, and personal property of $4,340, including automobiles, horses, calves, goats and mules, bringing his assessed wealth in the county up to $342,600.

The comedian with the horn-rimmed spectacles, Harold Lloyd, appears to be comfortably fixed with property assessed at $864,545. The comfort is accentuated by two batches of furniture, one assessed at 29,000 and the other at $44,000.

Lloyd's real estate holdings in the county were assessed at $309,920; stocks and bonds at $378,350 and jewelry at $2,000.

John Barrymore's property assessment aggregates $96,440 and here is found why he and Dolores Costello and their two children spend so much time on their yacht, the Infanta. IT IS ASSESSED AT $59,040. Barrymore's famous trophy and property room is assessed at $1,200, his furniture at $5,000 and jewelry at $2,500.

Richard *H*arthelmess rates an assessed wealth of $409,340, of which $292,100 is stocks and bonds, $48,500 furniture, $4,000 jewelry, $10,900 in automobiles and most of the rest in real estate.

Constance Bennett with all her property assessed at $190,025 finds jewelry assessed at $3,500 and furniture at $43,000; while Joan Crawford with $65,965 assessed w e a l t h lists $10,000 in jewelry and $2,500 in furniture.

Joe E. Brown, of the wide oral expanse, and his

wife, Kathryn list an assessed wealth of $55,510 including four expensive automobiles.

Gloria Swanson still has a competency, asssesed at $34,630.

THE SEATTLE DAILY TIMES, #6, September 3, 1934—Page 1, Col. 6 C.L.S.

A. F. OF L. CHIEF SEES STRIKES AS REVOLUTION AID

Matthew Woll Declares Recent San Francisco Tie-up Was Inspired by Order from Moscow.

By Associated Press

NEW YORK, Monday, Sept. 3.—UNITED ACTION BY THE CHURCH AND LABOR AGAINST COMMUNISM WAS URGED BY MATTHEW WOLL, VICE PRESIDENT OF THE AMERICAN FEDERATION OF LABOR.

Woll declared in an address at the CATHEDRAL OF ST. JOHN THE DIVINE THAT THE SAN FRANCISCO GENERAL STRIKE WAS INSPIRED BY "ORDERS FROM MOSCOW." Mentioning other recent labor disturbances which he said had been fomented by Communists, he asserted:

"*And these strikes, we are informed by their* leaders, ARE MERELY THE FORERUNNER OF A GREAT WAVE OF GREATER STRIKES, PREPARING THE WAY FOR A REVOLUTION. [144]

THE SEATTLE DAILY TIMES, #6, September 3, 1934, Page 2, Col. 3 C.L.S.

FATAL PLUNGE FROM HOSPITAL WINDOW PROBED

Coroner's deputies today were investigating a mysterious four-story plunge by Miss Autumn Gil-Martin, 25 years old, from her Providence Hospital room Sunday, AUGUST 26, IN WHICH SHE SUFFERED INJURIES WHICH CAUSED HER DEATH AT THE HOSPITAL EARLY YESTERDAY.

DR. W. H. CORSON, CHIEF DEPUTY CORONER, SAID MISS GILMARTIN, AN ATTRACTIVE DENTAL ASSISTANT, LIVING AT 1631 16TH AVE., WAS ADMITTED TO THE HOSPITAL AUGUST 24 FOR TREATMENT OF CHRONIC HEADACHES.

HOSPITAL ATTENDANTS SAID THE GIRL, SUBJECT TO FAINTING SPELLS, MAY HAVE ARISEN FROM HER BED, GONE TO THE WINDOW FOR AIR AND THEN FAINTED AND PLUNGED TO THE YARD. NO ONE WAS IN THE ROOM AND NO ONE SAW THE FALL, DR. CORSON SAID.

Hospital attendants said Miss Gilmartin's physician visited her half an hour before the plunge. Her nurse left the room only a few minutes before the plunge.

The girl had been treated at the hospital several times previously for headaches.

The girl's father, Michael Gilmartin, not knowing of the fall, arrived at the hospital to visit her only a few minutes after she was found lying under her window. She died despite a blood transfusion given by the father.

The girl never regained consciousness to tell about the plunge.

Miss Gilmartin was a graduate of Northwestern University, Chicago, being president of her class, and also was president of the Seattle Dental Hygeinists' Association. She attended the University of Washington before going to Northwestern and was a member of Alpha Phi Sorority.

THE SEATTLE DAILY TIMES, #6, September 3, 1934, Page 2, Col. 5 C.L.S.

BEATING VICTIM SUCCUMBS TO SEVERE HURTS

VICTIM OF A SEVERE BEATING, EDWARD JOSEPH MULLIGAN, 50 YEARS OLD, DIED YESTERDAY AT THE HARBORVIEW COUNTY HOSPITAL, WHERE HE WAS TAKEN LATE TUESDAY AFTER BEING FOUND UNCOJSCIOUS IN HIS CABIN NEAR 11318 MERIDIAN AVENUE.

DR. W. H. CORSON, CHIEF DEPUTY CORONER, SAID MULLIGAN DIED OF INJURIES RECEIVED FROM HIS ASSAILANTS. MULLIGAN'S SKULL WAS FRACTURED AND HE WAS SEVERELY BRUISED.

MULLIGAN REGAINED CONSCIOUSNESS FOR ONLY A FEW MINUTES, WHEN HE MUMBLED THAT SOME ONE ENTERED HIS CABIN AND BEAT HIM, HIS ASSAILANTS ARE UNIDENTIFIED. Dr. Corson said a coroner's inquiest may lead to clues.

MULLIGAN WAS FOUND IN HIS CABIN FULLY CLAD, BUT WITH HIS SHOES REMOVED.

Mulligan was a former landscape gardener. He is survivied by his estranged wife, Mrs. Katherine E. Mulligan and two daughters Mildred, 18 years old, and Annabelle, 16. They live in a home near the cabin. [145]

SEATTLE POST INTELLIGENCER, September 4, 1934, Page 1, Col. 2 C.L.S.

MARTIN ASKS HELP OF LABOR TO SLASH CITY-COUNTY COSTS

Governor Tells Big Gathering Plans for Saving.

RAPS WASTE

Legislators Will Be Asked to Enlarge Patrol

Denouncing wasteful methods in county and city government as relics of "horse and buggy days", Gov. Clarence D. Martin, called upon organized labor of Seattle and Tacoma yesterday to join with him in reducing government cost.

APPEARING BEFORE A THRONG OF 15,000 AT REDONDO PARK BEACH, WHERE TRADE UNIONS OF THE TWO SOUND CITIES WERE HOLDING THE FIRST ANNUAL JOINT LABOR DAY PICNIC, THE GOVERNOR DISCUSSED IN DETAIL THE PROGRAM WHICH HE EXPECTS TO PUT BEFORE THE LEGISLATURE NEXT JANUARY.

"THE COUNTIES AND CITIES HAVE FAILED TO CARRY ON AS THEY SHOULD," HE ASSERTED. "WE MUST CUT OUT THE WASTE OF GOVERNMENT AND REDUCE COSTS. THE TENDENCY NOW IS TOWARD A TRANSFER OF GOVERNMENT FROM COUNTY AND CITY TO STATE.

"THE STATE MUST ASSUME MORE AND MORE RESPONSIBILITY TOWARD OUR EDUCATIONAL SYSTEM, OUR HIGHWAYS, THE DEVELOPMENT OF OUR RESOURCES AND THE CARE OF THE AGED. THE STATE IS THE LOGICAL CENTRALIZED UNIT OF GOVERNMENT."

DECLARING THAT ONE COUNTY HAD ASKED HIM FOR EIGHT STATE PATROLMEN TO KEEP ORDER IN THE COUNTY DURING THE RECENT LONGSHORE STRIKE THE GOVERNOR SAID:

"IMAGINE EIGHT PATROLMEN ASKED TO KEEP ORDER IN A COUNTY WHERE THERE ARE 1,000 POLICEMEN AND SHERIFFS! WHAT IS THE MATTER WITH

COUNTY GOVERNMENT that cannot enforce its laws?"

He said he would recommend to the legislature the enlargement of the state police force to 150 or 200 men as a step towards centralization of enforcement in the state.

"Furthermore", he promised, "politics must be kept out of the state police force."

Adequate compensation for school teachers "earning less in some cases than dispensers of hard liquor" was another proposal made by the governor. He also demanded that a larger state appropriation be more for old-age pensions.

Reviewing briefly the material resources of the state, the governor pointed to good citizenship as the most important asset the state has.

"Citizenship is greater than partisanship," he said, "and we owe to our splendid school system the teachings of respect for organized authority and support of our laws."

The governor complimented the leadership of organized labor in Washington and its conduct particularly during the longshore strike crisis.

While asking his audience "to vote for the men best fitted to handle their offices" in the coming elections, Governor Martin refrained from indorsing candidates. A large number of candidates from Seattle and Tacoma were introduced to the crowd.

The day's activity was largely given over to sports, dancing and vigorous campaigning by candidates. Tacoma took the honors in the two intercity

contests—the men's and the women's tug-of-war. Mr. and Mrs. O. Berstrom of Tacoma were awarded a month's supply of [146] groceries for having the largest family on the grounds—twelve children in all.

Union officials said last night the success of the huge affair gave every assurance that it would be repeated next year as a joint celebration with an effort made to bring speakers of national prominence here from the East.

The suburb of South Park celebrated at the South Park Playfield under the auspices of the local Boosters' Club and the fire department held its annual picnic yesterday at Lonely Acres.

Every highway into Seattle was crowded last night with returning cars from trips taken over the elongated week-end, and ferry lines were taxed to capacity. After a day in which downtown streets seemed almost deserted Seattle finally wended its way home as dusk settled on the Western horizon.

SEATTLE POST INTELLIGENCER, September 4, 1934, page 2, Col. 7 C.L.S.

TODAY'S NEWS SUMMARY

Local:

Gov. Clarence D. MARTIN DENOUNCES WASTEFULNESS IN COUNTY AND CITY GOVERNMENT IN ADDRESS BEFORE SEATTLE AND TACOMA TRADE UNIONS' PICNIC. (Page 1, Col. 2, Part 1)

Seattle ENJOYS RESPITE FROM HEAT AS MERCURY MOUNTS ONLY TO 79 DEGREES. (Page 1, Col. 7, Part 1.)

Lewis Schwellenback leads in first returns of straw ballot on Democratic senatorial race. (Page 3, Col. 1, Part 1.)

Seattle to join nation in observance of Constitution Day, September 17. (Page 1, Col. 1, Part 2.)

MRS. ELIZABETH C. GRAHAM, SEATTLE RESIDENT FOR SIXTY FOUR YEARS, DIES. (Page 1, Col. 2, Part 2.)

SEATTLE WIDOW, MYSTERIOUSLY MISSING FOR TEN DAYS, FOUND WANDERING IN WOODS NEAR BOTHELL. (Page 1, Col. 5, Part 1,)

TWO NEW CASES OF INFANTILE PARALYSIS REPORTED; PARENTS AGAIN CAUTIONED TO WATCH CHILDREN FOR SYMPTOMS. (Page 0, Col. 0, Part 0.)

Second annual air show set for next Sunday at Boeing Field. (Page 1, Col. 3, Part 2.) Northwest:

SENATOR WILLIAM E. BORAH WARNS AGAINST COMMUNISTIC INFLUENCES IN LABOR DAY SPEECH AT POCATELLO. (Page 2, Col. 2, Part 1.)

SPOKANE TRAM OPERATORS PREPARE TO RESUME SERVICE TODAY DESPITE STRIKERS THREATS. (Page 7, Col 3, Part 1.)

TWENTY DEEP SEA FISHERMEN AND CREW RESCUED AFTER FISHING BOAT GOES AGROUND NEAR TILLAMOOK, ORE. (Page 7, Col. 5, Part 1.)

FOREST FIRES IN INLAND EMPIRE TAKE ANOTHER LIFE. (Page 7, Col. 4, Part 1.)

NATIONAL:

TEXTILE STRIKE STARTS, PARTIALLY OPERATIVE IN SOUTH, BUT FULL EFFECT NOT KNOWN UNTIL TODAY; GUARDSMEN CALLED OUT IN SOUTH. (Page 1, Col. 8, Part 1.)

ADMINISTRATION TO ASK NEXT CONGRESS TO ENACT 500 MILLION DOLLAR TAX LEGISLATION REPLACING LEVIES EXPIRING JULY 1, 1935. (Page 1, Col. 4, Part 1.)

LIBERTY PERILLED BY REGIMENTATION, DECLARES FORMER PRESIDENT HOOVER. (Page 1, Col. 6, Part 1.)

NATIONAL SOLID FUEL CODE AUTJORITY QUITS. (Page 2, Col. 6, Part 11)

DOUGLAS DAVIS, TRANSPORT PILOT, KILLED IN NATIONAL AIR RACES. (Page 1, Col. 3, Part 1.)

FOREIGN:

EVANGELINE BOOTH SELECTED AS WORLD HEAD OF SALVATION ARMY. (Page 1, Col. 3, Part 1.) [147]

SEATTLE POST INTELLIGENCER, September 6, 1934—P. 2, Col. 7. C.L.S.

TODAY'S NEWS SUMMARY

Local

TWO DROWN IN SEATTLE WATERS. (Page 1, Col. 3, Part 1.)

CITY COUNCIL ASKS $2,500,000 CUT IN BUDGET. (Page 1, Col. 2, Part 1.)

MRS. REESE B. BROWN ACCUSED IN FIVE-MILLION-DOLLAR SCOLLARD ESTATE CASE. (Page 1, Col. 4, Part 1.)

GLEN KERRY TRIMBLE GRANTED DIVORCE FROM FORD TRIMBLE. (Page 1, Col. 6, Part 2.)

OIL COMPANIES AND PORT COMMISSION NAMED DEFENDANTS IN UNITED STATES OIL SUIT. (Page 1, Col. 3, Part 2.)

JAMES E. DAVIS, BANK EMBEZZLER, WAIVES HEARING; WILL PLEAD GUILTY. (Page 1, Col. 5, Part 2.)

CAMPAIGN LAUNCHED TO REDUCE JUVENILE DELINQUENCY IN SEATTLE. (Page 1, Col. 8, Part 2.)

Northwest

WESTERN FEDERATION OF WOMEN'S CLUBS MEETING IN PORTLAND TOLD TO STUDY ECONOMICS. (Page 3, Col. 5, Part 1.)

Gov. Clarence D. Martin's advisory board takes first steps at Olympia to modernize governmental units. (Page 3, Col. 2, Part 1.)

MILK DISTRIBUTORS VOICE COMPLAINTS AGAINST INCREASED PRICE TO PRODUCERS AT THURSTON COUNTY COURT HEARING. (Page 1, Col. 1, Part 2.)

NATIONAL

TWO SLAIN IN TEXTILE STRIKE RIOTING. (Page 1, Col. 8, Part 1.)

PRESIDENT ROOSEVELT INTERVENES

IN TEXTILE WALKOUT. (Page 1, Col. 6, Part 1.)

GIANT BREAKERS POUND CALIFORNIA BEACHES, LEAVING DAMAGE IN WAKE. Page 1, Col. 6, Part 1.)

UPTON SINCLAIR SEES FEDERAL FINANCIAL SUPPORT FOR EPIC PLAN. (Page 2, Col. 5, Part 1.)

TWO MORE RECOVERY OFFICIALS QUIT. (Page 2, Col. 6, Part 1.)

GENERAL JOHNSON WOULD END NRA'S INTERNAL BICKERING BY MUZZLING LABOR, INDUSTRIAL AND CONSUMER ADVISERS. (Page 2, Col. 8, Part 1.)

NAVY DEVELOPS SECRET PLANS FOR FORTIFYING GUAM. (Page 1, Col. 7, Part 1.)

SEATTLE POST INTELLIGENCER, September 6, 1934—P. 1, Col. 2. C.L.S.

CITY COUNCIL LOPS $2,500,000 FROM BUDGET ESTIMATES

Slash Brings Total Amount for 1935 to $7,552,000

1909 BASIS

DEPARTMENTS MUST PARE FIGURES FOR YEAR

A drastic slash of more than $2,500,000 in the

preliminary 1935 CITY BUDGET WAS PUT SQUARELY UP TO DEPARTMENT HEADS BY A UNANIMOUS VOTE OF THE CITY COUNCIL YESTERDAY AFTERNOON.

WITHOUT DEBATE THE COUNCIL MEMBERS VOTED "A REQUEST" TO DEPARTMENT HEADS TO REVISE THEIR ESTIMATES WITHIN THE NEXT FIVE DAYS TO CONFORM TO FIGURES SET FOR EACH DEPARTMENT IN A REPORT READ TO THE COUNCIL BY COUNCILMAN JOHN E. CARROLL, CHAIRMAN OF THE FINANCE COMMITTEE.

Carroll's recommendations slashed the $10,100,000 demands of the city departments to $7,552,155.96. [148]

This figure is $764,475 below this year's budget with contained drastic cuts effected by former Mayor John F. Dore.

In his preliminary remarks to the council committee of the whole, Carroll declared that the 1919 budget of $7,181,716 had been used as a basis by the finance committee for next year's expenditures, because expected revenue in the two widely separated years is approximate.

Following the suggestion made in a formal report by Councilman David E. Lockwood early last month, Carroll divided anticipated revenue among the various city departments on the basis of essential public service rendered and each department

head will be asked to adjust expenditures accordingly.

In proposing this plan, Lockwood declared it would be better than through arbitrary cuts by one council, because in his opinion each department head is most familiar in all phases of his work and can make the wisest reductions.

Analyzing the 1935 proposed figure, Carroll pointed out that of the total, $1,542,400 covers exemptions over the 15 mill limit for cities under the 40 mill tax law.

This leaves $6,009,755.96 to be raised under the levy. However, all the city can raise by this taxation is $3,449,663.48, leaving a remainder of $2,560,092 to be raised by other means.

Of this amount only $1,651,500 will be produced by present ordinances and fee schedules, so that the additional nonmillage revenue totaling $909,000 must somehow be obtained through other means.

Speculating on where this money would come from, Councilman David Levine pointed out that Seattle's share of the state liquor taxes is not included in anticipated revenue and should bring in more than $175,000.

Lockwood voiced the suggestion that the City Light department could probably cut $50,000 on its street lighting bill to the city. This brought heated response from Councilman Frank Fitts. In the discussion that followed, however, it was indicated by other members of the council that the light and water departments would probably be willing to have their occupational taxes raised from 3½ to 7 per cent.

A motion was also adopted that no wage reductions are to be made in effecting the department reductions.

While no opposition was voiced to Caroll's recommendations at yesterday's session, it is anticipated that there will be many clashes in the council before all the proposed slashes are made. However, while membrs of the council may fight strongly for "pet" projects there is a general consensus that the budget will have to be cut to approximate the recommendations.

An amusing sidelight on yesterday's meeting of the council was the fact the Council President Levine resorted to a "parliamentary expedient" to get all the members together to consider the budget.

Because of difficulty of getting the council together for that purpose on several former occasions, Levine yesterday called a special meeting of the body—which can be enforced by having a police officer round up tardy members.

Then when all the councilmen arrived on time the meeting was dissolved into a meeting of the committee of the whole. [149]

THE SEATTLE DAILY TIMES, #6, September 6, 1934—P. 2, Col. 6, C.L.S.

DROWNING ENDS GOOD-NATURED TUSSLE ON BOAT

SLIPPING FROM A FISHING BOAT DURING A FRIENDLY SCUFFLE, OSCAR JOHNSON, 38 YEARS OLD, 5102 13TH AVE. S.,

DROWNED AT 7 O'CLOCK LAST EVENING IN SALMON BAY. TWO HOURS EARLIER, HOLLES PITTENGER, 18, FELL OFF A LOG BOOM WHILE FISHING AND DROWNED IN DUWAMISH WATERWAY NEAR HIS HOME, 4535 W. MARGINAL WAY.

Several persons saw Pittenger fall, Chief Deputy Coroner W. H. Corson said, but were unable to reach the youth.

A diver was seeking Pittenger's body today, after unsuccessful dragging by harbor patrolmen last night.

Dr. Corson said Johnson and Max A. Patterson, a friend, were scuffling aboard the boat Zarenda, trying to push each other overboard. Johnson fell a few moments later, possibly striking his head, and was dragged down by his rubber boots.

Clarence Buhler, on the fishing boat Queen nearby, dived for Johnson, but was unable to reach him. Harbor patrolmen found the body.

Johnson is survived by five sisters, Mrs. Floyd Green, 5213 15th Ave. S.; Mrs. Harry Grissom, 623 Lucile St.; Miss Bessie Johnson, and Mrs. F. W. Nowalk, 901 Eighth Ave., and Mrs. C. J. Carlson, at whose home he lived.

THE SEATTLE DAILY TIMES #6, September 6, 1934—P. 2, Col. 3, C.L.S.

SEAMAN FATALLY INJURED IN FALL FROM GANG-PLANK

FALLING OFF A GANG PLANK, FRANK

ROBINSON, 35-YEAR-OLD SEAMAN ABOARD THE CANNERY MOTORSHIP LIBBY MAINE, WAS INJURED FATALLY LAST MIDNIGHT AT THE AMES TERMINAL, WEST WATERWAY. HE DIED EARLY TODAY AT MARINE HOSPITAL.

Hospital reports said Robinson's skull was fractured when he struck the dock as he plunged into the water. Bystanders rescued him. The ship returned recently from Alaskan waters.

THE SEATTLE DAILY TIMES #6, September 6, 1934—P. 3, Col. 4, C.L.S.

FIRE MENACE GREATEST EAST OF MOUNTAINS

FIRE FIGHTERS FOUND THEIR GREATEST WORRIES EAST OF THE CASCADE MOUNTAINS TODAY. CLOUDY WEATHER IN WESTERN WASHINGTON HELPED FOREST AGENCIES TO GET ALL FIRES UNDER CONTROL yesterday.

Fighters who controlled the great Pete King and McLendon fires in Idaho, and the Stevens-Pend Oreille fire in Washington had fair weather and low humidity ahead, the weather bureau forecast.

After burning 5,000 acres of brush and small timber, the Oregon fire that destroyed eight homes near Jacksonville was brought under control late yesterday.

Weather reports showed where fire danger lay. Seattle's highest temperature yesterday was 69, but

Wenatchee, Yakima and Ritzville had 94, Spokane and Walla Walla, 92 degrees.

Forecast for Seattle for tonight and tomorrow calls for cloudy skies and gentle southwest winds. [150]

SEATTLE POST INTELLIGENCER, September 8, 1934 — P. 1, Col. 4. C.L.S.

RIFLES QUELL MOB IN BEER STRIKE RIOTS

6 Hurt and 2 Arrested As Police, Guards and Teamsters Clash at Brewing Plant

Several hundred strike sympathizers were held at bay by an armed guard late yesterday when they attempted to attack a Northwest Brewing Company truck on 1st Ave. near Pine St., following a riot in the morning in which six union drivers were injured and two members of a rival union arrested.

The guard, carrying a high-powered rifle, went into action when six pickets of the teamsters' union sought to keep the truck from unloading at a beer parlor. The pickets fled when he pointed his rifle in their direction, but the sympathizers were still surrounding the truck when a prowler car arrived from police headquarters. The crowd was dispersed without casualties or any actual violence.

Peter Marinoff, head of the brewery, employed riflemen for all his trucks following the pitched battle early in the morning between members of the

teamsters' union and members of the Brewery Workers' International Union, who are distributing the beer—EACH BOTTLE OF WHICH BEARS A UNION LABEL.

AS A RESULT OF THE FIGHT, F. W. BREWSTER, SECRETARY OF THE TEAMSTERS' UNION AND MEMBER OF THE CITY CIVIL SERVICE COMMISSION, AND C. REILY, A MEMBER OF THE UNION, WERE ARRESTED AND REQUIRED TO POST $25 BAIL APIECE. SIMILAR ACTION WAS TAKEN AGAINST TWO OF THE BREWERY WORKERS' UNION MEMBERS, ALBERT PETRIG AND WILLIAM JARDINE, AFTER THEY HAD BEEN TREATED FOR INJURIES IN THE CITY HOSPITAL.

The companions of Petrig and Jardine, Ted Day and H. Harrison, were more severely injured, it being necessary to take from ten to twenty stitches in the scalp and arm of each. Two others who did not require hospital attention were hurt.

The battle took place at 6th Ave. S. and Airport Way shortly after the trucks had left the brewery at 1200 6th Ave. S. Approximately twenty-five men attacked the trucks, dragging off the drivers and beating them. Peace was not restored until Patrolmen Walter F. Day and R. B. Shaughnessy, who had been stationed at the brewery arrived on the scene.

The attack took place after Superior Judge J. T. Ronald had signed an order restraining Brewster

and Dave Beck, Northwest representative of the teamsters' union and the union itself from interfering with the shipments of Marinoff's beer, from picketing the brewery or from displaying banners charging the brewery with being unfair to organized labor.

The order had not yet been served on the union, but John F. Dore, attorney for Marinoff, declared that the attack was in contempt of court if the assailants knew of the court's action, even though personal service had not been obtained.

The restraining order was issued as a result of the suit which Marinoff is bringing against Beck, Brewster and six rival breweries charging that the strike is a conspiracy to compel him to raise his prices.

Dore announced that he intended to transfer the suit to federal court, as interstate shipments to Oregon, Idaho and Montana are involved. [151]

As a result of yesterday's disorders, the Brewery Workers Union replaced the teamsters' union at Marinoff's plants in Tacoma and Walla Walla, and this morning will be in complete control of distribution for that company.

Henry Crane, secretary of the Brewery Workers, who hold a charter from the American Federation of Labor, sent a report of the battle with the teamsters to international headquarters of his organization in Cincinnati.

"We have done everything we could amicably to settle our differences with the teamsters," Crane said. "We even suspended our contracts with all Northwest breweries and let the teamsters

handle the trucking until the two internationals could settle the question of jurisdiction."

"But when the teamsters' union attempts to step in and ruin a man's business by calling out his drivers without provocation, then we take action."

Marinoff said he would keep his trucks moving "if we have to drive them around the streets empty."

As a precaution, however, he decided he would not send his trucks out after dark, declaring it was subjecting his drivers and equipment to needless risk.

None of the rioters will be punished for contempt of court unless the victims or Marinoff files an affidavit before Judge Ronald citing them to show cause why they should not be cited for contempt.

Mayor Charles L. Smith said he would take no action in the matter unless there are further disorders.

SEATTLE POST INTELLIGENCER, September 8, 1934 — P. 1, Col. 3. C.L.S.

DAVIES, IN COURT ADMITS LARCENY; SENTENCE DELAYED

Former Auditor Alert In Court; Glad Hammer Victims Are Better

His face haggard, but with head erect, James E. Davies, for twenty years a trusted employe of the

First National Bank, entered pleas of guilty yesterday in superior court to all three of the COUNTS IN THE GRAND LARCENY INFORMATION FILED AGAINST HIM FOR HIS ADMITTED EMBEZZLEMENT OF BANK FUNDS OVER A TERM OF YEARS.

HE THREW HIMSELF ON THE MERCY OF THE COURT BUT, AT THE REQUEST OF HIS ATTORNEY, JOHN J. SULLIVAN, PRESIDING JUDGE ROBERT M., JONES DEFERRED SENTENCE FOR A WEEK.

AS SOON AS JOHN AMBLER, CHIEF ASSISTANT UNITED STATES ATTORNEY HEARD OF THE PLEAS, HE ANNOUNCED THAT HE WOULD DROP THE CHARGES OF VIOLATING THE NATIONAL BANKING ACT WHICH HAVE BEEN LODGED AGAINST DAVIES AND WHICH HE WAS PREPARING TO PRESENT TO THE FEDERAL GRAND JURY. HE EXPLAINED THAT HE REACHED THIS DECISION AFTER A CONFERENCE WITH CHIEF DEPUTY PROSECUTOR EMMETT G. LENIHAN.

"As the state court has assumed jurisdiction," he said, "I do not feel that the matter should be pressed in United States court. While the thefts did constitute a breach of the national banking act as well as of the state laws, I do not think the federal government is disposed to punish a man twice for the same offense." [152]

When Sullivan accompanied his client to the county jail after their brief appearance in court, Davies inquired eagerly about the condition of his wife, eldest daughter and mother-in-law, whom he attacked with a hammer last week in a moment of frenzy brought on by brooding over his dismissal as assistant auditor of the bank after his shortage was discovered.

His eyes shone when he was informed that his mother-in-law, Mrs. Agnes Reedy, had recovered to a sufficient extent to permit her discharge from Providence Hospital, and that his wife, Mrs. Kathleen Davies, and their daughter, Margaret Mary, twenty-one, were believed definitely out of danger, despite the fact that both their skulls were fractured.

"That's wonderful," he breathed softly.

He presented a far different appearance from the disheveled figure at the police station last week, when he attempted to strangle himself after his arrest. Now his snow-white hair was immaculately combed, he was smooth-shaven and clear-eyed and his costume was beyond reproach. He displayed a pathetically eager desire to observe all the jail regulations, refusing the proffer of a cigarette until Jail Superintendent Silas E. Bunker had assured him it was permissible for him to smoke.

"I want to keep all the rules," he said, "and when I get out—after I've paid—I want to show the people that I can come back."

THE BELLINGHAM HERALD, September 10, 1934 — P. 12, Col. 3. C.L.S.

BOY STRANGLED

ASOTIN, Wash., Sept. 10—(AP)—APPARENTLY STRANGLED *by the weight of a motorcycle which fell across his little body, Eugene Elwood Hirzel, 3,* son of Mr. and Mrs. Laverne Hirzel, *was killed* here Saturday. *No one witnessed the accident. It was believed the boy had climbed upon the motorcycle, parked by the roadside, and that it fell upon him in dismounting.*

THE BELLINGHAM HERALD, September 10, 1934 — P. 8, Col. 5. C.L.S.

YAKIMA STAYS CLOSED

YAKIMA, Sept. 10—(AP)—*Yakima's 5,000 or more children of school age this morning went to school only to turn right around and go home again. The same fate befell the 10,000 or more who normally attend the county schools.*

Physicians, holding a conference yesterday, decided to recommend the closing, as DURING THE LAST WEEK THERE HAVE BEEN SEVERAL NEW CASES OF INFANTILE PARALYSIS AND ONE DEATH. The epidemic is definitely subsiding but school officials preferred to take no chances. A heavy rain fell here yesterday and the temperature fell to 47 degrees, the lowest in several months, so the outlook is for speedy control of the paralysis outbreak.

Yakima school officials on Tuesday asked for

medical advice about opening schools and were urged to carry out their plans of beginning work this Monday. *As a result all teachers were notified and usual pre-school meetings and conferences were held, and arrangements made to assign lessons today. Superintendent A. C. Davis announced that he would use the teachers for special inves-* [153] *tigation during this week and for working on courses of study,* as they probably will not be required to make up the time they are now losing from their work.

THE BELLINGHAM HERALD, September 10, 1934 — P. 11, Col. 4. C.L.S.

UNIVERSITY STUDENT DIES
IN MOUNT VERNON

MOUNT VERNON, Sept. 10—(AP)—ROBERT O'LEARY, 20, son of Mr. and Mrs. Dan O'Leary, OF SEATTLE, DIED HERE LAST NIGHT OF TUBERCULAR MENINGITIS. HE HAD BEEN SPENDING THE SUMMER WITH RELATIVES HERE.

He would have been a senior at the UNIVERSITY OF WASHINGTON this fall. His parents, two brothers and two sisters survive.

SEATTLE POST INTELLIGENCER, September 10, 1934 — P. 9, Col. 3. C.L.S.

DIABLO BIDS OPEN
THURSDAY

Bids for construction of the Diablo power house,

A PROJECT INVOLVING APPROXIMATELY OPENED BY THE BOARD OF PUBLIC HALF A MILLION DOLLARS, WILL BE WORKS THURSDAY MORNING.

CONTRACTORS WILL SUBMIT THEIR FIGURES FOR THE HUGE CITY LIGHT PROJECT AT THE SKAGIT UNDER FOUR PROPOSITIONS, THREE OF THEM FOR SEPARATE SECTIONS OF THE JOB AND ONE COVERING THE ENTIRE WORK.

Under the proposition "A" is the construction of the steel and concrete power house building. Proposition "B" covers construction of a combination transformer and switch platform, a railroad bridge and tailrace. Proposition "C" involves furnishing and placing concrete in generator pedestals, walls, beams and slabs and around machinery in the power house building. Proposition "D" includes all the work in the first three.

SEATTLE POST INTELLIGENCER, September 10, 1934 — P. 9, Col. 8. C.L.S.

COUNCIL FIRM ON SLASH IN EXPENDITURES

Expected Revenue Calls for Drastic Action, Members Point Out; Protests Heard

With councilmen standing firm on their declaration that the city budget for 1935 must be slashed

to $7,552,155, department heads TOMORROW WILL FILE REVISED EXPENDITURE FIGURES TO MEET THE DRASTIC CUTS.

IN THE FACE OF GROWING PROTEST AGAINST ANNOUNCEMENTS THAT THE REDUCTIONS WILL NECESSITATE DISMISSAL OF 200 OUT OF THE 665 [154] POLICEMEN AND 190 OF THE 649 FIREMEN, CURB GREATLY THE DEVELOPMENT AND MAINTENANCE OF THE PARK SYSTEM AND NECESSITATE LAYOFFS FOR A NUMBER OF OTHER EMPLOYES, COUNCILMEN POINT HELPLESSLY TO EXPECTED REVENUE.

"CERTAINLY IT MAY BE UNWISE TO DISMISS ALL THESE EMPLOYES AND THE FALSE ECONOMY CRY HAS JUSTIFICATION," COUNCIL PRESIDENT DAVID LEVINE DECLARED YESTERDAY, "BUT THERE IS ONE FACT THAT CAN'T BE ESCAPED AND THAT IS THAT THERE IS NOT MONEY TO SPEND. THE COUNCIL'S HANDS ARE TIED."

Pointing to the slash not only as an economy move but as an "inescapable necessity," Councilman David Lockwood said:

"Possibly the person who had to reduce expenses in recent years by selling his car or moving to a less expensive home throught these measures unwise. And the business man who had to reduce his force of experienced help also questioned the wisdom of the move. Yet in both cases declining income forced them to act."

The council has already eliminated possibility of reduction by means of cutting salaries. Along with the recommendation to department heads allocating the money to be spent went a resolution forbidding any slashes in wages.

Even with the rigid economy program, the council is faced with the problem of raising approximately one million dollars above known income.

With considerable public resentment already expressed against the slash in the park budget where funds were reduced from $440,000 last year to $285,000 next year, "fireworks" are expected at a budget meeting of the park board this morning.

Many civic organizations took up the cudgel for the parks at the announcement to Jacob Umlauff, head gardener, the budget savings may necessitate elimination of all but four major parks.

However, Harry Westfall, chairman of the park board, is inclined to be skeptical of the necessity for such a drastic program.

THE BELLINGHAM HERALD, September 13, 1934 — P. 1, Col. 3. C.L.S.

GENERAL PERSHING, 74, SPENDS QUIET BIRTHDAY AT FRENCH HEALTH RESORT

VITTEL, France, Sept. 13—(AP)—GENERAL JOHN J. PERSHING *observed without ceremony today the seventy-fourth anniversary of his birth.*

The commander-in-chief of the United States army in the World war, erect as when he was a cadet at West Point, *received hundreds of congratulatory telegrams and letters. He found reading and replying to them a pleasant occupation.*

"It's a day like any other," he said. "I am here taking a cure at the springs, and I find I am being benefited greatly. *My health is good.*"

THE GENERAL SPENDS ABOUT HALF HIS TIME IN FRANCE OVERSEEING THE LANDSCAPING OF EIGHT MILITARY CEMETERIES, WHERE 30,885 AMERICANS WHO SERVED UNDER HIM ARE BURIED. He supervises, also, the maintenance of the twenty-one battle monuments which mark the places where American soldiers fell. [155]

THE SEATTLE DAILY TIMES, #6, September 13, 1934 — P. 1, Col. 8. C.L.S.

REPUBLICAN SENATORIAL RACE STILL UNDECIDED

Morthland Only 1,490 Votes Behind Olympia Banker with 373 Precincts in State Unreported

WITH BUT 373 OF THE STATE'S 2,852 PRECINCTS UNREPORTED, RENO ODLIN, OLYMPIA BANKER, TODAY WAS LEADING D. V. MORTHLAND OF YAKIMA BY 1,490

VOTES FOR THE REPUBLICAN NOMINATION FOR UNITED STATES SENATOR.

THE NEW RETURNS CUT ODLIN'S LEAD SLIGHTLY, BUT ELECTION WATCHERS POINT OUT, ALL BUT 165 OF THE UNREPORTED PRECINCTS ARE IN KING AND PIERCE COUNTIES, WHERE ODLIN IS EXPECTED TO POLL THE HEAVIER VOTE.

INCIDENTALLY THE NEW RETURNS INCREASED THE LEAD OF LEWIS B. SCHWELLENBACK OVER JOHN C. STEVENSON FOR THE DEMOCRATIC SENATORIAL NOMINATION.

SCHWELLENBACK HAD A LEAD OF MORE THAN 12,000 OVER STEVENSON, WHO CONCEDED THE NOMINATION YESTERDAY.

OTHER TABULATIONS TODAY SHOWED THAT JUSTICE JAMES M. GERAGHTY OF SPOKANE MUST FIGHT IT OUT WITH SUPERIOR JUDGE R. C. BELL of Tacoma in a run-off election in November for Geraghty's State Supreme Court position.

The judicial election is nonpartisan.

Fifteen rural King County precincts counted this morning boosted Odlin's lead by 100 votes although a few precincts from other sections of the state raised Morthland's total.

There are 151 King County precincts yet to hear from. The fifteen precincts reported today are nearly 10 per cent of the King County list outside of Seattle. The unreported county precincts may add 1,000 votes to Odlin's lead.

Fifty-seven of the other 222 unreported precincts are in Pierce County, which, it is believed, would give Odlin a preference over Morthland.

Another discovery, based on the count of the fifteen rural King County votes by the auditor's staff today, was that they were voting heavily for Ralph A. Horr, former congressman, and rather heavily for Frank A. Jeffrey, Seattle attorney, for the Republican senatorial nomination.

SEATTLE POST INTELLIGENCER, September 17, 1934 — P. 1, Col. 4. C.L.S.

MOTHER FOILS PLOT TO BURN SEATTLE BOY

Monte Solkover, 3,
Escapes Death in
Flames, Torch
Hurled Through Window

A sinister and amazing fire plot, imperiling THE LIFE OF A SLEEPING SIX YEAR OLD BOY, WAS UNDER POLICE INVESTIGATION YESTERDAY.

THE BOY'S LIFE WAS SAVED BY HIS MOTHER, WHO RUSHED INTO HIS BEDROOM WHEN SHE HEARD A THUMP FOLLOWED BY THE BOY'S SHRILL AND [156] HORRIFIED SCREAM.

THE MOTHER, MRS. BEN SOLKOVER, 713 26TH AVE., FOUND FLAMES IN THE ROOM.

THE THUMP SHE HEARD WAS FROM A BLAZING TORCH MYSTERIOUSLY FLUNG THROUGH THE WINDOW. IT HAD SCORCHED THE FLOOR AND THE WINDOW CURTAIN BEFORE MRS. SOLKOVER SUCCEEDED IN EXTINGUISHING IT.

MRS. SOLKOVER REPORTED TO POLICE THE STRANGE OCCURRENCE WHICH MIGHT HAVE CLAIMED THE LIFE OF HER SON, MONTE, WAS AT 9:30 P. M. SATURDAY.

MRS. SOLKOVER WAS AT A LOSS TO ASCRIBE A MOTIVE FOR THE AFFAIR, AND POLICE WERE EQUALLY BAFFLED, THEY SAID.

THE TORCH WAS MADE BY WADDING NEWSPAPERS TOGETHER AND SOAKING THEM IN GASOLINE OR SOME OTHER HIGHLY INFLAMMABLE LIQUID, SHE SAID. IT FELL JUST A FEW INCHES FROM THE FOOT OF THE BOY'S BED, THREATENING TO IGNITE THE BED CLOTHING.

MRS. SOLKOVER SAID SHE FIRST TRIED TO STAMP OUT THE FLAMES, BUT THEY WERE BURNING SO FIERCELY THAT SHE HAD TO USE A BLANKET TO SMOTHER THEM.

THE BOY SAID LAST NIGHT THAT HE WAS AWAKE WHEN HE SAW THE FLAMING PAPER TOSSED IN THE WINDOW.

"IT FRIGHTENED ME, AND I SCREAMED," HE DECLARED.

THE LAD'S FATHER, BEN SOLKOVER, OPERATES A SERVICE STATION. LIKE MRS. SOLKOVER, HE WAS MYSTIFIED AS TO THE MOTIVE FOR THE PLOT.

SEATTLE POST INTELLIGENCER, September 17, 1934 — P. 3, Col. 4. C.L.S.

DENTIST'S SON DIES IN OREGON CYCLE MISHAP

Logan Galbraith's Machine Hit Auto With Terrific Force; Roommate Only Bruised

Fatally injured when a motorcycle carrying two students crashed with an automobile SATURDAY NIGHT, LOGAN GALBRAITH OF SEATTLE SUCCUMBED SOON AFTER IN A PORTLAND HOSPITAL, ACCORDING TO WORD RECEIVED BY HIS FATHER, DR. H. L. GALBRAITH, DENTIST, EARLY YESTERDAY.

YOUNG GALBRAITH WAS TWENTY-EIGHT, AND A STUDENT AT THE NORTH PACIFIC COLLEGE OF DENTISTRY. THE TRAGEDY OCCURRED WHEN GALBRAITH, RIDING HIS MOTORCYCLE WITH HIS ROOMMATE, HERBERT BAKER, CRASHED INTO AN AUTOMOBILE AT A PORTLAND STREET INTERSECTION.

GALBRAITH WAS FLUNG TO THE PAVE-

MENT WITH TERRIFIC FORCE, SUSTAINING INJURIES THAT CLAIMED HIS LIFE SOON AFTERWARD. BAKER ESCAPED WITH HEAD AND BODY BRUISES.

THE GALBRAITH HOM HERE IS AT 1715 N. 45TH ST.

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9 Hurt in 3 Seattle Auto Mishaps; Driver Held.

NINE PERSONS WERE INJURED AND ONE DRIVER WAS ARRESTED AS THE RESULT OF THREE TRAFFIC ACCIDENTS IN AND NEAR SEATTLE YESTERDAY.

ALBERT L. MEYERS, TWENTY-NINE, A SEAMAN, WAS ARRESTED AND HELD FOR INVESTIGATION BY TRAFFIC OFFICERS AFTER THE CAR HE WAS DRIVING COLLIDED WITH A MACHINE DRIVEN BY LA VERNE NICKERSON, TWENTY-NINE, [157] 3040 LINDEN AVE. NICKERSON WAS TAKEN TO THE KING COUNTY HOSPITAL WITH SERIOUS HEAD AND BACK INJURIES.

The accident happened at 3rd Ave. and Pike St. A. A. Richards, thirty-two, and Harold Lanning, thirty-nine, who, police said, were passengers in Meyer's car, were booked at police headquarters on a charge of being intoxicated after being treated at City Hospital for cuts.

James Buckely Jr., 171 24th Ave., told police he collided with a parked car at 31st Ave. S., near Main St., when he swerved to avoid a machine that

cut in front of him. Virginia Smith, seventeen, 4103 Andover St., a passenger in Buckley's car, was taken to the County Hospital with a head injury and lacerations of the face.

Another passenger, Fred Dawson, 420 33rd Ave., was treated for a cut hand.

Joseph Gabalis, fifty-four, of Renton, his wife and his daughter, Helen Florence Gabalis, fifteen, all were injured when their automobile struck a telephone pole on the Dunlap Canyon road south of the Seattle city limits.

THE BELLINGHAM HERALD, September 17, 1934 — P. 1, Col. 8. C.L.S.

YOUTH AND GIRL DIE IN AUTO CRASH

Three Others Badly Injured as Automobile Strikes Telephone Pole on Highway.

State Toll Mounting

Lester Genung and La Verne Conn Victims in Skagit

(Special to The Herald)

MOUNT VERNON, Sept. 17.—Lester Genung, 20, Anacortes, and LaVerne Conn, daughter of Mr. and Mrs. William Conn, of Edison, were killed early

Sunday morning and three other persons seriously injured WHEN THEIR AUTOMOBILE CRASHED INTO A TELEPHONE POLE ON THE PACIFIC HIGHWAY TWO MILES NORTH OF MOUNT VERNON.

The injured are HALLIE WHITE, 22, OF ANACORTES, DRIVER OF THE *light sedan,* which was reduced to wreckage by the force of the impact, SEVERE BODY CUTS AND BRUISES.

MISS MELBA SINCLAIR, 16 DAUGHTER OF MRS. C. R. CONN, OF *EDISON, serious cut on scalp and lacerated leg.*

REUBEN (Pete) PETERSON, 23, ANACORTES, *fractured right arm, severe left arm injury.*

NORMAN HAMMER, about 20, SUMMIT PARK, *escaped with the least injuries of any of the party.* Stunned at first, young Hammer recovered and was able to relate the story of the wreck, with Peterson's help, to officers.

Four linemen, Al Albee, Bud Robertson, Deane Benston and Marion Coleman, CALLED TO MOUNT VERNON EARLY SUNDAY MORNING TO REPAIR *insulators* for the *Puget Sound Power & Light Company,* [158] *discovered the wrecked car containing the five unconscious forms,* as they motored past the scene of the wreck. *They hastily summoned medical assistance,* Sheriff Fleming and Coroner Brisky. Within a short time the work of removing the victims from the car started.

It was learned that Lester GENUNG, son of Mr. and Mrs. R. C. Genung, of Anacortes, *had been*

ejected through the windshield and crushed, headlong, against a telephone pole. Death was apparently instantaneous, according to the investigating officers.

Pretty LA VERNE CONN, a favorite with all who knew her, *died* of a skull wound and internal injuries *soon after reaching the Burlington hospital. She did not recover consciousness.*

Melba Sinclair, daughter of Mrs. C. R. Conn, of Mount Vernon, who was able to converse for a time yesterday with her mother, said that she was aroused to realization of the accident by Norman Hammer, who attempted to lift her clear of the car and who also tried to flag a passing car or two, then fell unconscious in the wrecked car. She said she tried several times to call for help, but that it hurt her so badly to scream that she gave up and slipped off into unconsciousness until found by the linemen. Her condition is still pronounced serious, her head being practically scalped.

Reuben Peterson related to officers that the group of young people had planned to go dancing Saturday evening. Peterson and Genung worked in the Farwest Canning Company at Anacortes and learned that they would have to continue working until late Saturday night. Knowing the girls were expecting them at Edison, Hammer and White motored to their homes and all four rode back to Anacortes to wait until the two arrived from the cannery. It was 2 a. m. Sunday before the party was finally assembled.

As it was too late to attend a dance, they decided to motor to Sinnett's cafe in Mount Vernon for supper. This they did and lingered long at the table. They left Sinnett's about 4:30 a. m., making one stop at the Erickson home at Riverside, to permit Miss Erickson, who left Mount Vernon with the party, to go home.

Proceeding on, the wreck occurred within a few minutes' time as they were driving north along the Pacific highway. All three injured people are being cared for in the Burlington General hospital. Their condition showed improvement today.

LaVerne Conn was the granddaughter of Mrs. Ida Conn, one of Edison's earliest pioneers. She was born in Edison and was graduated from the Edison high school with the class of 1934. She will be buried in her graduating dress. Funeral rites will be held for Miss Conn at the Walter Hulbush Funeral Home in Burlington at 2 o'clock Tuesday afternoon.

Surviving of her immediate family are the parents, Mr. and Mrs. William Conn, and two brothers, Willard and Wesley Conn, both of Edison.

Lester Genung was the son of R. C. Genung, who is at present employed at Raymond, and Mrs. Genung, who lives in Anacortes. He is a nephew of E. W. Genung, proprietor of the Genung pool hall, Anacortes.

He was born in Anacortes and was a member of the 1934 graduating class of the Anacortes high school. During the past summer he had been employed at the Farwest Canning Company.

Last rites for young Genung will be held at 2 o'clock Wednesday afternoon in the Haugen chapel, Anacortes, under charge of Walter Hulbush, of Burlington. [159]

THE SEATTLE DAILY TIMES, #6, September 18, 1934 — Page 1, Col. 7. H.E.R.

FOOD AND BUILDING MATERIAL TO SPEED TO STRICKEN CITY

Loss May Reach $2,000,000;
Two Eskimos Lose Lives;
Many Injured and Overcome;
Hospital Saved

Laden with a capacity cargo of 5,000 tons of foodstuffs and building materials, the Alaska Steamship Company steamship Delwood will sail from Seattle direct for Nome Saturday, company officials announced today. It will be a special relief trip. She will start loading at Pier 2 tomorrow afternoon. She has accommodations also for 174 passengers.

Seattle went swiftly to the aid of fire-blackened Nome today. SEVERAL AGENCIES, MOVED TO QUICK ACTION BY REPORTS WHICH TOLD OF THE DISASTER OF THE NORTH, ORGANIZED FOR RELIEF.

THE ALASKA COMMITTEE OF THE SEATTLE CHAMBER OF COMMERCE, HEADED BY VOLNEY RICHMOND, CALLED A SPECIAL MEETING TO DECIDE WAYS AND

MEANS OF HELPING NOME MEET ITS CRISIS. THERE WAS TALK OF A SPECIAL SHIP TO BE LOADED AND DISPATCHED AS RAPIDLY AS POSSIBLE, WITH MATERIALS AND SUPPLIED FOR THE STRICKEN CITY.

WHILE SEATTLE'S HASTY PREPARATIONS WENT FORWARD IN THE MERCY CAMPAIGN TO RECIPROCATE IN SOME MEASURE FOR THE FORTUNE IN GOLD NOME HAS SENT THROUGH SEATTLE SINCE GOLD RUSH DAYS, RALPH LOMEN, PRESIDENT OF THE LOMEN COMMERCIAL COMPANY, ANNOUNCED THE BURNED COMMUNITY WILL NOT STARVE.

THREE THOUSAND CARCASSES OF REINDEER MEAT ABOARD THE STEAMER ARTHUR J. Baldwin are available to any one who needs it, Lomen said. The meat, consigned to Seattle, was to have left Nome today, but Lomen ordered it made available for the emergency.

"Enough stocks were saved from the fire to keep Nome going for a short time," Lomen announced, "so there is no immediate danger of starvation. But heavy shipments must be made from Seattle to care for the requirements of the winter."

Lomen disclosed he has chartered a 4,000-ton vessel to load supplies in Seattle and leave for Nome by Monday. It will carry food, drugs, building materials and other needed cargo. The Baldwin will return to Seattle and make her last trip of the

year to Nome October 3 with more supplies. The Lomen Company's motorship Sierra is standing by in Arctic waters, ready to give aid if necessary.

Lomen said his company's cold storage plant, spared by the flames that razed hundreds of buildings, can hold a winter supply of meat for Nome, once the supply is rushed northward.

Another source of succor was the United States Coast Guard, whose cutters Chelan, Shoshone and Northland were pushing toward Nome under forced draft today. They are due some time tomorrow evening, and have orders "to render whatever assistance is necessary to the destitute and homeless." The ships are making a 600-mile journey.

Six other cutters stood by today in Puget Sound and other Pacific ports, ready on short notice to join the Bering Sea patrol.

The Seattle office of the Coast Guard said most of the cutters near Seattle are small, but pointed out that the Haida, veteran with the Chelan of many northern voyages, was due to have repairs completed at the Bremerton Navy Yard today and might be sent north. The Atlanta, recently launched, was in Lake Union ready for orders.

Some idea of the tremendous work that must be done to prepare [160] Nome for its bitter winter, came in Lomen's statement that the number of buildings destroyed would run into the hundreds.

"We have shipped in building materials all summer," Lomen said, "for Nome has been on a boom. The brisk demand has left supplies low. They were to have been augmented by a ship from Seattle Oc-

tober 3, but heavy movements of cargo will be needed now."

Lomen said his company's commercial plant, valued at $350,000 and a vital storehouse for coal, oil, lumber and other staples, fortunately escaped the blaze. The company's drug store and apartment building, valued at $70,000, were destroyed.

"I learned in telegrams that the homes of my brothers, Senator Alfred J. Lomen, director of the commercial company, and Harry Lomen, in charge of the drug store, were destroyed with many others," Lomen added. "But the saving of the commercial company plant was good news."

The Alaska Steamship Company's Victoria, en route to Nome and due to arrive Sunday, has 700 tons of groceries, meats and perishables aboard, Leslie W. Baker, traffic manager, said today.

Baker said the Victoria will make another trip this fall, leaving Seattle October 10, and five other ships are available if needed. The official said he sent telegrams last night asking company agents at Nome what their pressing needs will be and giving assurance that as soon as requirements are listed cargoes will be loaded on ships.

"If the community decides to rebuild before winter sets in," Baker said, "a huge amount of material must be sent North soon. Otherwise, according to reports we have, many persons must be taken from Nome for the winter. There will be no place to house them."

Ever ready in time of need, the American Red Cross, put its resources at the disposal of Nome

today. Alaska chapters were ordered to rush needed supplies to the charred city at the expense of the national body.

James L. Fieser, vice chairman of the Red Cross, telephoned from Washington, D. C., to A. L. Schafer, Pacific branch manager, to order food, clothing and medical aid shipped to Nome from other Alaskan cities for the sake of speed. Much was to go by airplane from Juneau, the Associated Press reported.

A united Press dispatch from New York City said Carl J. Lomen, Alaska's "reindeer king," was to go at once to Washington, D. C. to seek federal aid for Nome before the winter "freeze-up" hampers transportation of supplies.

Lomen, a brother of Ralph Lomen, said the lack of shelter for the city will be hard to overcome, but the most urgent need is for food and medical supplies, which cannot be sent in large quantities after ice clogs Arctic waters.

SEATTLE POST INTELLIGENCER, September 18, 1934 — Page 1, Col. 3. C.L.S.

REIFELS DROP SUIT FOR BONDS

VANCOUVER, B. C., Sept. 17.—(Special)—The Reifel family today dropped the suit brought by them HERE TO PREVENT THE ROYAL BANK OF CANADA FROM REIMBURSING THE BONDING COMPANY WHICH PUT UP THE $200,000 BONDS FOR HENRY AND GEORGE

C. REIFEL, WHICH BONDS WERE FORFEITED IN THE UNITED STATES COURT AT SEATTLE ON FAILURE OF THE REIFELS TO APPEAR FOR TRIAL ON SMUGGLING CHARGES.

WITHDRAWAL OF THE SUIT MEANS THAT THE BANK WILL PAY THE BONDING COMPANY. [161]

MRS. FLORENCE A. WILLIS DEPOSITED THE $200,000 IN THE BANK TO REIMBURSE THE BONDING COMPANY FOR THE BONDS OF HER FATHER AND BROTHER. TODAY SHE ENTERED INTO A CONSENT JUDGMENT IN THE SUPREME COURT DISMISSING HER ACTION TO PREVENT PAYMENT.

THE BELLINGHAM HERALD, September 18, 1934 — Page 1, Col. 7. H.E.R.

FORMER BELLINGHAM RESIDENTS AMONG HOMELESS

Nome Banker, Educator, Dentist and Baker, Among Losers in Fire Known in This City

Among the 1,000 residents of Nome many of whom were made homeless by the fire which swept through the sub-arctic Alaskan gold town Monday are several former Bellingham residents.

MRS. HARRY LOMEN, WIFE OF ONE OF THE FIVE LOMEN BROTHERS who operate the Lomen Commercial Company's EXTENSIVE

REINDEER AND TRADING INTERESTS, and a former resident of Bellingham, IS NOW VISITING HERE, ACCOMPANIED BY HER DAUGHTER, SARAH VIRGINIA DAWSON, who plans to enter the University of Washington next month. MRS. LOMEN (NEE EDNA HEATON) has lived in Nome for the last seven years. She HAD PLANNED TO return ON THE LAST BOAT OF THE SEASON, Scheduled to leave Seattle early in October.

Among the other former Bellingham residents now living at Nome is J. S. Stangroom, a brother of Mrs. Joseph W. Kindall, of this city, who is cashier of the Miners Merchants Bank of Nome, which was destroyed. Mr. Stangroom has been in the North several years.

DR. HOWARD HUGHES, FORMERLY OF BELLINGHAM AND EVERSON, *went to Nome last May,* flying in from Ketchikan, where he had practiced for two years. *Dr. Hughes opened a dental office* in the business district which was wiped out in Monday's fire.

L. E. ROBINSON, *former principal of the Mount Baker Union High School, at Deming,* also is a Nome resident. For six years he has been DISTRICT SUPERINTENDENT *of the native school, which is operated by the federal government.* His daughter, Phyllis, is attending Whatcom high school here this year.

WILL ERVEN, PROPRIETOR OF THE MIDNIGHT SUN BAKERY, *lived in this city many*

years ago. His daughter, MARGARET, *accompanied by her grandmother, recently came to Bellingham for the winter. Miss Erven is a student at Whatcom high school.*

MRS. GUY BOYD, whose HUSBAND IS EMPLOYED BY THE UNITED SMELTING MINING COMPANY, is another former Bellingham resident now living in Nome.

MRS. BERTHA MC KAY, A SISTER TO MRS. JOHN ODELL, of this city, IS SECRETARY TO THE FEDERAL DISTRICT JUDGE AT NOME.

RICHARD LUDWIG, SON OF MRS. GEORGE LUDWIG, a graduate of Fairhaven high school, the Bellingham Normal and the University of Washington, who went to Nome in June, *was employed* as a mechanical engineer *by* the Hammon Consolidated Gold Fields, A SUBSIDIARY OF THE UNITED STATES SMELTING & Refining COMPANY.

Mrs. Lomen received her first information concerning the Nome disaster when she read The Herald Tuesday morning. She planned to return to Seattle Wednesday, where she has been visiting during the last month and where she will meet her husband, who will "come out," on the next southbound boat. [162]

Harry Lomen, was in charge of the Nome drug store, which was one of the two buildings lost by the Lomen interests. The company's principal establishment, located near the dock, escaped the flames. The Arctic Transport Company, owned by the Lomen brothers, operates two freighters, both of which now are in the North.

Mrs. Lomen explained that the effects of the disaster will be less serious than they would have been had the fire occurred six or seven weeks later, when the roadstead, facing the Bering sea, will be frozen over for the long Arctic winter. She also regarded it as fortunate that the stores had not yet laid in heavy stocks for the winter, in view of the fact that practically every store in the town was destroyed. Most of the winter's supplies were to go in during October.

Under normal conditions prices in the famed gold mining city are much higher than those prevailing in the "states." With two cows in the town, fresh milk is quoted at 50 cents a quart, and virtually the entire milk consumption of the community consists of canned milk from Puget Sound. Electricity is 25 a kilowatt, or about five times the local rate. Coal, imported from the Sound, sells from $35 to $40 a ton. Meats range from 35 to 50 cents a pound.

Most of the buildings of Nome were wooden structures built during the boom days of 1898. Mrs. Lomen sponsored a movement to mark the historic buildings, which figured in the city palmy days. Among these was the cabin of Rex Beach, author of the "Spoilers" and other best sellers. About a dozen places were marked during the last summer.

Wireless messages were received Tuesday from Mr. Robinson, Dr. Hughes, and other former local residents, saying all were safe. Phyllis Robinson was assured by her father that her dog team was uninjured.

THE SEATTLE DAILY TIMES, #6, September 18, 1934 — Page 1, Col. 2. H.E.R.

AIR SUBSIDY BY GERMANY DISCLOSED

By Associated Press

WASHINGTON, Tuesday, Sept. 17—A report that Germany was using impounded foreign funds to subsidize German aircraft manufacturers was ready today to the Senate munitions committee.

A letter written December 4, 1933, by the International Engineering Company, Inc., to the United Aircraft Exports, Inc., was put into the record. It said the German government was subsidizing German manufacturers to the extent of 20 per cent against nongerman competition in all lines.

"This fact should be known to American firms as we have recently noted that the foreign funds impounded in Germany are now used in financing such subsidies," it said.

"Did you know that FOREIGN FUNDS IMPOUNDED IN GERMANY WERE BEING USED FOR THE PURCHASE OF MILITARY EQUIPMENT?" Chairman Nye asked C. W. Deeds, treasurer of United Air Craft.

"We had only this report," the witness replied.

OTHER EVIDENCE was PRESENTED TO SHOW THAT THE STATE DEPARTMENT ON AUGUST 5, 1933, *TOO* COGNIZANCE OF SALES OF AIRPLANES BY AMERICAN MANUFACTURERS TO THE GERMAN GOVERNMENT AND TOOK STEPS TO WARN EX-

PORTERS THAT THE AMERICAN GOVERNMENT WAS OPPOSED TO SUCH EXPORTS.

A letter from Joseph C. Green, State Department munitions ex- [163] pert, to John Dewey Hickerson, assistant chief of the division of Western European affairs, was put into the record. It said all importations of war material into Germany were prohibited by the Versailles Treaty, and such importations would be a violation of Germany's treaty obligations to the United States.

Green acted after the Commerce Department had informed him that twenty airplane engines had been sent to Germany in the six months prior to August. Evidence before the committee indicated these shipments actually were much larger.

Green wrote Hickerson that "should the occasion arise, it (the government) would make every effort to dissuade airplane manufacturers from exporting military airplanes to Germany, and that it is probable such measures would prove effective."

30 [164]

THE SEATTLE DAILY TIMES, #6, September 21, 1934 — P. 3, Col. 1. C.L.S.

BURKE ESTATE IN LEGAL KNOT; VALUE REDUCED

When Mrs. Caroline McGilvra Burke, died in May, 1932—she left behind her a legal knot which

today Superior Judge William G. Long was struggling to untie.

Mrs. Burke bequeathed $24,000 TO THE CHILDREN'S ORTHOPEDIC HOSPITAL, LEFT A $50,000 TRUST FUND FOR THE SAMUEL AND JESSIE KENNEY PRESBYTERIAN HOME, AND PROVIDED FOR A $250,000 TRUST FUND TO PAY ANNUITIES TO *SEN* OF HER ELDERLY FRIENDS TO TAKE CARE OF THEIR NEEDS UNTIL THEY TOO SHOULD DIE. THEN THE $250,000 WAS TO GO TO THE UNIVERSITY OF WASHINGTON TO ESTABLISH A GREAT BURKE MEMORIAL BUILDING TO THE MEMORY OF HER HUSBAND.

But—today—the University, the hospital, the home, nor even the aging friends have received a penny of the estate.

BUSINESS REVERSES, HAVE DWINDLED THE VALUE OF THE BURKE ESTATE. TODAY THE SEATTLE TRUST COMPANY, EXECUTORS OF THE ESTATE, HAVE ONLY $125,000 IN CASH AND NEGOTIABLE SECURITIES TO PROVIDE FOR ANY OF THE GRANTS.

TWO OF HER AGING FRIENDS HAVE DIED. THE OTHER FIVE ARE IN NEED. SO ATTORNEYS FOR THESE BENEFICIARIES UNDER HER WILL, WENT INTO COURT YESTERDAY TO PLEAD FOR THEIR

CLIENTS — TO ASK THAT THE $125,000 BE USED TO PAY THE AMOUNT OF THE ANNUITIES ON THE $250,000 FUND WOULD BE TO DATE.

Standing against them in a courtroom where *they* were hardly seats at the attorneys' table for all the counsel, were lawyers for the University of Washington, the Kenney Home and the Orthopedic Hospital.

They, too, entered their pleadings. The Burke estate was of little value today. It would be hard to convert it—the Burke Building, the Empire Building, the Mann Building and other properties —into cash and negotiable securities. To do that, they said, would provide for no one—not even the beneficiaries of the $250,000 trust fund.

Placed in exhibit were two artists' drawings—showing the Burke memorial on the University campus—as the widow conceived it—a memorial which might of necessity never be built should a division be made of the Burke estate today.

The attorneys for the University, the home and the hospital asked that the Burke estate be held in trust, pending further order of the court in a day when values have returned, and that net income from the trust go to each of the three funds—the $24,000 for the Orthopedic, the $50,000 for the Kenney Home and the $250,000 for the beneficiaries and the University. Thus, they claimed, the funds

would be built and some day fulfil the dream of Mrs. Burke.

But against this stook the aging beneficiaries—the youngest 53 years old, the oldest 85—with a fear they might die in need, because of the legal knot.

With this problem—and many minor points to mull over—Judge Long has taken the matter under advisement today—feeling he must "not make too hasty a decision, and yet must return his ruling before it is too late to aid those in need.

THE SEATTLE DAILY TIMES, #6, September 21, 1934 — P. 2, Col. 4. C.L.S.

SCHOOLHOUSE TO BE BUILT FOR COULEE CHILDREN

By Associated Press.

COULEE DAM, Friday, Sept. 21.—BIDS on the FOUR-ROOM SCHOOLHOUSE *to be erected at the model engineers town here* WILL BE OPENED AT ALMIRA, OCTOBER 12, it was announced today. THE SCHOOL *will be* USED BY THE CHILDREN OF ENGINEERS OF THE UNITED STATES RECLAMATION SERVICE AND WILL BE READY NEXT SPRING. THIRTY COTTAGES ARE ALREADY UNDER CONSTRUCTION IN THE TOWN. [165]

THE SEATTLE DAILY TIMES, #6. September 21, 1934—P. 4, Col. 3. C.L.S.

BURNED LINER'S OFFICERS TO BE QUIZZED AGAIN

Associated Press.

NEW YORK, Friday, Sept. 21.—THE DEPARTMENT OF COMMERCE INQUIRY INTO THE BURNING OF THE MORRO CASTLE *was resumed today with the* ASSURANCE THAT ALL the SHIP'S OFFICERS WILL BE REEXAMINED.

Dickerson N. Hoover, chairman of the inquiry board, said he expected to call Chief Operator Rogers today, and possibly acting Capt. William F. Warms, *The inquiry,* Hoover said, *will continue into next week.*

SEATTLE POST INTELLIGENCER, September 22, 1934—Page 1, Col. 4. C.L.S.

MOOK GIVES NEW REASON FOR OUSTER

Judge Findley Denies Motion to Dissolve Restraining Order in Trinity Church Court Case

Charges that the reason for the attempt to dismiss the Rev. Charles Stanley Mook as rector of Trinity Parish Church was because of his knowledge of the embezzlement of parish funds by a

member of the vestry in 1933 were laid yesterday before Superior Judge Howard M. Findley.

The accusations were contained in an affidavit by the Rev. Mr. Mook, filed in his suit against the vestry and the Rt. Rev. S. Arthur Huston, Episcopal bishop OF OLYMPIA, TO PREVENT HIS REMOVAL FROM OFFICE.

THE CLERGYMAN DID NOT GO INTO DETAILS IN REGARD TO THE ALLEGED EMBEZZLEMENT, SIMPLY SAYING THAT HE HAD KNOWN OF IT FOR MANY MONTHS AND NAMING "ONE CROASDIL" AS THE GUILTY PARTY.

"AFFIANT," THE AFFIDAVIT WENT ON, "AT PARISH MEETINGS HAD CONDEMNED THE EMBEZZLEMENT AND NEGLIGENT HANDLING OF SUCH FUNDS; AFFIANT FURTHER condemned the submission by the vestry to the parish of alleged audited financial statements, which were actually false and fictitious and designed to conceal the embezzlement . . . from the members of the parish; . . . affiant reluctantly has come to the conclusion that the actual and motivating reason for desiring his dismissal by the defendant vestrymen is because of his knowledge of the said embezzlement and subsequent false and fictitious financial reports to conceal the same which were submitted by the defendant vestryman to the said parish."

E. P. Whiting, attorney for the vestrymen, who spent most of the afternoon addressing the court

in an unsuccessful attempt to dissolve the temporary restraining order obtained by the Rev. Mr. Mook, made no reference to the embezzlement allegations, except to observe:

"The affidavit makes certain charges against the vestry which might be rather serious if they had any bearing on the case."

In denying the motion to dissolve the restraining order and in overruling a demurrer, Judge Findley explained that he did so simply to obviate the necessity for two appeals to the supreme court. If he granted the motion or sustained the demurrer, he pointed out, the case would be appealed at once on purely legal points, and then might be sent back for a hearing on the merits, after which there might be a second appeal.

The court announced, that the case would be heard on its merits beginning 9:30 o'clock Monday morning. Ethan Allen Peyser, chief counsel for the Rev. Mr. Mook, expressed the intention of putting his client on the stand and also of calling at least three Episcopal clergymen as expert witnesses on canonical law, to supplement the affidavits he has already submitted. [166]

Judge Findley listened to Whiting's arguments only after a last minute endeavor to reach an amicable settle out of court had failed.

An audience which included many of the most prominent Episcopalian clergymen in the diocese and scores of members of Trinity parish—some of whom were so interested in the case that they

brought their luncheons with them in paper bags to make sure that they would not lose their seats—packed the courtroom to overflowing.

The effort at conciliation was made at a session which was probably without precedent in all the annals of the ancient church—an extraordinary meeting of the vestry in the jury room of the court.

Judge Findley had decided on one last attempt to reach a settlement shortly after the case was assigned to his court and, after a conference with the numerous opposing counsel, it was agreed that the nine vestrymen should be summoned to the courthouse to see if they could not settle their differences with the Rev. Mr. Mook without airing the church controversy. As soon as all the vestrymen had assembled, they went into session, with the Rev. Dr. George A. Wieland, rector of Epiphany parish and president of the standing committee of the diocese, as presiding officer.

The Rev. Mr. Mook attended the meeting, with his counsel and Joseph A. Barto, attorney for parishoners intervening on their rector's behalf. The other side was represented by Whiting, but Ivan L. Hyland, attorney for the bishop and himself a member of the standing committee, took no part in the proceedings.

The session lasted throughout the noon hour—a fact which gave rise to the belief in many quarters that an agreement was being reached. But, shortly after 1 p. m., the conferees emerged with the announcement that there had been no settlement and that the litigation would have to take its course.

After a recess had been taken, Whiting resumed the argument which he had started earlier in the day in support of his motion to dissolve the temporary restraining order which the Rev. Mr. Mook had obtained.

Whiting's position was that Bishop Huston constitutes an ecclesiastical court whose judgment is final and that, as the prelate had not reversed the vestry's decision to remove the Rev. Mr. Mook, the civil court was without jurisdiction.

But the attorneys on the other side contend that, under the canons of the church, an instituted rector can be removed only by the bishop and the presbyters—or priests—of the parish, and that, as Bishop Huston had not even consulted the standing committee on the matter, the Rev. Mr. Mook is still rector of Trinity church.

Dozens of ancient tomes, some dating back to the Civil war, had been brought into court by the opposing counsel for citation.

SEATTLE POST INTELLIGENCER, September 22, 1934—P. 5, Col. 6. C.L.S.

SUMMARY OF TODAY'S NEWS

Local:

James E. Davies, confessed bank embezzler, sentenced to five to fifteen years for embezzlement. (Page 3, Col. 7, Part 1.)

Trinity Parish pastor charges attempt to dismiss

him resulted from his knowledge of embezzlement of parish funds. (Page 1, Col. 4, Part 1.)

Seattle school board give official support to CAMPAIGN FOR 3-MILL TAX LEVY FOR SCHOOLS. (Page 3, Col. 1, Part 1.)

SEATTLE POWER CUT OFF WHEN LIGHTNING STRIKES TRANSMISSION POLE. (Page 3, Col. 5, Part 1.)

BENEFICIARIES OF ESTATE OF MRS. CAROLINE MCGILVRA BURKE ASK COURT TO ORDER PAYMENT OF ANNUITIES. (Page 1, Col. 5, Part 2.)

ROTATION OF WORK IN CITY DEPARTMENTS PLANNED TO MEET REDUCTIONS IN FUNDS UNDER 1935 CITY BUDGET. (Page 1, Col. 1, Part 2.)

NEW CASE OF INFANTILE PARALYSIS REPORTED. (Page 5, Col. 4, Part 1.)

Northwest:

MULTNOMAH COUNTY DEMOCRATIC INVESTIGATING COMMITTEE CHARGES MISMANAGEMENT IN ADMINISTRATION OF GOVERNMENT RELIEF FUNDS. (Page 5, Col. 1, Part 1.) [167]

STATE GRANGE ANNOUNCES STATE WIDE DRIVE FOR ORGANIZATION OF COUNTY POWER DISTRICTS TO PREPARE FOR DISTRIBUTION OF GRAND COULEE POWER. (Page 5, Cal. 8, Part 1.)

NONE TO BE REPLATTED AS PROTECTION AGAINST FURTHER DISASTERS. (Page 1, Col. 3, Part 2.)

NATIONAL:

TEXTILE STRIKE VIRTUALLY ENDED: MILLS PROBABLY WILL REOPEN MONDAY. (Page 1, Col. 2, Part 1.)

DEPARTMENT OF JUSTICE HAS EVIDENCE CONSIDERED PROOF THAT BRUNO HAUPTMANN IS THE KIDNAP MURDERER OF THE LINDBERGH CHILD. (Page 1, Col. 6, Part 1.)

B. C. Forbes, financial expert, says President Rooesvelt could speed end of depression by appointing cabinet of business and indutrial leaders. (Page 4, Col. 4, Part 1.)

FOREIGN:

JAPANESE TYPHOON TAKES 1,346 LIVES AND INFLICTS HUGE INDUSTRIAL TOLL. (Page 1, Col. 3, Part 1.)

SEATTLE POST INTELLIGENCER, September 22, 1934—P. 3, Col. 4. C.L.S.

LIGHTNING PLAY HITS SEATTLE

SWEEPING SUDDENLY OUT OF THE SOUTHEAST, A THUNDER SHOWER AND ELECTRICAL STORM POURED .23 OF AN INCH OF RAIN IN SEATTLE STREETS WITHIN FIFTEEN MINUTES LATE YESTERDAY AFTERNOON AND DROVE PEDESTRIANS TO SHELTER.

IT WAS THE FIRST THUNDER SHOWER OF THE YEAR AND AN UNUSUAL EXPER-

ENCE IN SEATTLE. IT WAS ACCOMPANIED BY A COOL WAVE AND A RISING BAROMETER.

LAWRENCE C. FISHER, GOVERNMENT METEOROLOGIST, DESCRIBED THE STORM AS PURELY local and of the seasonal type, which occur usually on a change of season. The autumnal equinox is due at 9:46 a.m. tomorrow.

The storm was caused, he said, by a mass of cold air moving in to take the place of a low-pressure area that moved eastward.

The weather forcast for tomorrow is for mostly cloudy weather and somewhat cooler in the morning, with gentle winds, mostly northerly.

SEATTLE POST INTELLIGENCER, September 22, 1934—P. 5, Col. 8. C.L.S.

GRANGE STARTS POWER DRIVE

IN AN EFFORT TO PREPARE FOR PUBLIC DISTRIBUTION OF POWER FROM GRAND COULEE DAM, THE WASHINGTON STATE GRANGE YESTERDAY ANNOUNCED A STATE WIDE DRIVE TO ORGANIZE COUNTY POWER DISTRICTS.

IN THE CURRENT ISSUE OF THE GRANGE NEWS, OFFICIAL PUBLICATION OF THE FARM ORDER, ERVIN E. KING, STATE GRANGE MASTER, RECENTLY APPOINTED TO THE COLUMBIA BASIS COMMISSION, CALLS UPON ALL COUNTY

GRANGE ORGANIZATIONS TO OBTAIN PETITIONS from state offices for circulation in their counties.

The law, initiated by the Grange in 1928 and adopted by voters in 1930, requires a 10 per cent petition of voters to put the issue of creating a power district on the ballot at a general election.

If the vote is favorable either the entire county or the portion designated in the petition is established as a utility district, with authority to arrange for the generation of electric power or to purchase and distribute it.

Attempts to establish power districts, taking in part of the territory of various counties, failed in 1932. The new drive, according to Secretary Fred Lewis of the State Grange, is directed at taking in the entire territory of counties. [168]

SEATTLE POST INTELLIGENCER, September 22, 1934—P. 3, Col. 5. C.L.S.

POWER LINE HIT BY LIGHTNING; TRAMS HALTED

Street Car Service Suspended Hour and Half When Bolt Strikes Pole On Skagit

Causing one of the largest Seattle power shutoffs in years, lightning struck a pole ON THE

SKAGIT POWER LINE DURING YESTERDAY'S ELECTRICAL STORM AND BURNED OUT SEVERAL INSULATORS.

THE POWER WENT OFF AT 12:22 P. M., AND STREET CARS WERE STOPPED FOR NEARLY AN HOUR AND A HALF WHILE A LARGE PART OF THE RESIDENCE DISTRICTS WERE WITHOUT ELECTRIC SERVICE FOR EVEN LONGER PERIODS. FOR A TIME STORE AND OFFICE LIGHTS WERE DIMMED DOWNTOWN AND IN SOME INSTANCES ELEVATORS WERE SHUT DOWN.

THE LIGHTNING BOLT STRUCK NEAR BACON CREEK, TWELVE MILES FROM THE GORGE POWER HOUSE. CITY LIGHT CREWS WERE RUSHED TO THE SCENE, AND THE POWER LINE WAS BACK IN SERVICE LAST NIGHT.

Street car service did not resume until 1:50 p. m., and residential communities began to receive current again shortly thereafter.

Four and one-half minutes after the break Tacoma was drawn on for 20,000 kilowatts per hour. The Cedar Falls plant, which has also been shut down in order to preserve water in the Cedar Falls reservoir, resumed with 25,000 kilowatts.

Residential service was cut off at once, all available power being put into the downtown business and commercial areas. It was not sufficient, however, to permit operation of street cars, or elevators in some buildings.

The County-City Building switchboard of City Light was flooded with calls.

SEATTLE POST INTELLIGENCER, September 24, 1934—P. 9, Col. 1. C.L.S.

ATTEMPTS TO REOPEN BUDGET DUE THIS WEEK

Police Chief Comstock Pressing for Reconsideration; Wholesale Dismissals Discounted

Though the final 1935 city budget, totalling $8,103,420.85 HAS BEEN APPROVED BY A 7-TO-1 VOTE OF THE CITY COUNCIL, AND THE BUDGET HEARINGS DECLARED CLOSED, ATTEMPTS TO REOPEN IT WILL BE MADE IN THE COUNCIL THIS WEEK.

POLICE CHIEF GEORGE H. COMSTOCK IS PRESSING FOR RECONSIDERATION OF THE POLICE BUDGET, CONTENDING THAT IT WAS CUT MORE HEAVILY THAN THE COUNCIL INTENDED.

REPORTS THAT THE $213,208.49 REDUCTION MADE BY THE COUNCIL IN THIS YEAR'S BUDGET AS COMPARED WITH THE 1934 BUDGET WILL LEAD TO WHOLESALE DISMISSAL OF CITY EMPLOYES WERE DISCOUNTED BY COUNCILMEN YESTERDAY.

Councilmen declared that most of the departments affected would make the required reduction in their budgets by lay-offs and rotation of work among their employes, so that the number of em-

ployes who will lose their jobs will be comparatively small.

Heads of departments are scheduled to file their revised budgets trimmed down [169] to the total fixed by the council in approving the final budget last week, with M. H. Strouse, auditor of appropriations early this week.

The budget will be formally adopted and the official tax levy ordinance passed at the meeting of the council a week from tomorrow.

SEATTLE POST INTELLIGENCER, September 24, 1934, Page 1, Col. 2. C.L.S.

EASTON SWEPT BY FIRE,
LOSS NEAR $40,000

Conflagration, Starting in Vacant Building, Believed Incendiary; Auto Man Injured

Many Townfold at Cle Elum as Flames Ravage Property; Vandals Steal Merchandise.

Fanned by a strong wind, fire believed to have been of incendiary origin destroyed virtually the entire business section of EASTON, SMALL LOGGING AND RAILROAD TOWN AT THE EAST END OF SNOQUALMIE PASS, YESTERDAY MORNING.

THE FIRE STARTED ABOUT MIDNIGHT IN A VACANT BUILDING FORMERLY OCCUPIED BY THE HIGHLINE CAFE, AND REDUCED EIGHT BUILDINGS TO ASHES BEFORE IT WAS BROUGHT UNDER CONTROL, FOUR HOURS LATER. DAMAGE WAS ESTIMATED AT $40,000.

THE BATTLE AGAINST THE FLAMES WAS HANDICAPPED BY THE FACT THAT MANY OF THE TOWN'S RESIDENTS HAD GONE TO CLE ELUM TO ATTEND A DANCE. BEFORE TELEPHONE LINES BURNED OUT, HOWEVER, WORD WAS SENT TO CLE ELUM AND THE EASTON RESIDENTS HURRIED HOME, WITH THE CLE ELUM FIRE DEPARTMENT PRECEDING THEM.

D. W. PLASS, OWNER OF THE EASTON AUTO COMPANY PLANT, WAS BURNED ON THE HANDS AS HE TRIED VAINLY TO STEM THE ROARING FLAMES WITH A GARDEN HOSE FROM BEHIND A HASTILY CONTRIVED BARRICADE BEFORE AID ARRIVED.

NEAR-FREEZING TEMPERATURES MADE THE WORK OF THE FIRE *G*IGHTERS DOUBLY DIFFICULT.

THE INCENDIARY THEORY OF THE FIRE'S ORIGIN WAS BASED ON THE STATEMENT OF WITNESSES THAT THE HIGHLINE CAFE BUILDING, IN WHICH THE BLAZE STARTED, APPEARED TO BURST INTO FLAMES AT SEVERAL POINTS AT ONCE.

TRAFFIC ON THE SUNSET HIGHWAY WAS TIED UP FOR TWO HOURS BY THE FIRE.

STRUCTURES WHICH WERE LEVELED INCLUDED THE JOHNSON BROTHERS GENERAL STORE AND POSTOFFICE, LOSS ESTIMATED AT $15,000; PETE ROCHA'S RESTAURANT, A TWO STORY BUILDING, AND ALSO HIS LOG CABIN SOFT DRINK PARLOR, LOSS ESTIMATED AT $5,000; A POOL HALL OPERATED BY A. B. ELKINS, A SWEET SHOP operated by Winnie Hages. Joe Parker's soft drink parlor, a vacant garage building leased until recently by the state highway department. The Easton Auto Company building, one of the largest in the town, also was damaged to the extent of several hundred dollars.

The fire was marked by much vandalism, owners of the ruined property said, a large quantity of merchandise disappearing after being carried from the burning buildings.

With the smoke still curling up from the charred ruins, community leaders already were going about plans for rehabilitation yesterday. [170]

SEATTLE POST INTELLIGENCER, September 24, 1934 * P 3, Col 6 C.L.S.

TWO WIVES LOOK ON WHILE HOLDUP MEN ROB MATES

LYING IN WAIT OUTSIDE A CAPITOL

HILL APARTMENT HOUSE, THREE BANDITS HELD UP TWO COUPLES EARLY YESTERDAY AS THEY ENTERED AN AUTOMOBILE AFTER AN EVENING OF BRIDGE.

THE TWO MEN WERE ORDERED OUT OF THE CAR AND ROBBED WHILE THEIR WIVES STOOD BY HELPLESSLY.

THE HOLDUP OCCURRED IN FRONT OF THE APARTMENT OF G. S. FOSTER, 325 SUMMIT AVE. N. MR. AND MRS. FOSTER HAD JUST ENTERED THEIR CAR WITH MR. AND MRS. C. E. VROOMAN, 1427 E. PIKE ST., WHOM THEY WERE PREPARING TO TAKE HOME, WHEN THE THREE BANDITS EMERGED FROM THE DARKNESS.

THEY ORDERED THE TWO MEN BACK TO THE SIDEWALK, AND WHILE ONE BANDIT HELD A PISTOL AT THEIR BACKS, THE OTHER TWO RIFLED THEIR POCKETS, TAKING ABOUT $30 FROM FOSTER AND $1.30 FROM VROOMAN.

FOUR OTHER GUESTS AT THE BRIDGE PARTY HAD LEFT THE APARTMENT APPARENTLY BEFORE THE BANDITS PREPARED THEIR AMBUSH.

IN ANOTHER SEATTLE HOME, WHERE A BRIDGE GAME WAS IN PROGRESS AT ABOUT THE SAME HOUR, A "PARTY" BURGLAR CRAWLED THROUGH A BED ROOM WINDOW AND ESCAPED WITH TWO WOMEN'S PURSES CONTAINING ABOUT $4 IN EACH, IT WAS REPORTED BY D. W. HARRIS, 4756 4TH AVE. N. E., THE HOST.

POLICE FOUND ONE OF THE PURSES LATER IN A GARBAGE CAN. IT HAD BEEN EMPTIED.

THE SEATTLE DAILY TIMES, #6, September 25, 1934—P. 2. Col 4 C.L.S.

SKAGIT LOW BIDDER FAILS TO PERFECT BOND

The Board of Public Works may have to issue a new call for contractor's bids on City Light's new Diabo power house on the Skagit River.

Hendrickson-Alstrom CONSTRUCTION COMPANY, AWARDED THE CONTRACT A FEW DAYS AGO ON A BID OF $267,298.50 NOTIFIED THE BOARD YESTERDAY IT HAD BEEN UNABLE TO OBTAIN A PERFORMANCE BOND BECAUSE OF ITS LOW BID ON THE TAILRACE AND BRIDGE, INVOLVING MUCH DIFFICULT EXCAVATION. THESE ITEMS WERE INCLUDED IN THE BID AT $113,354.50, COMPARED WITH $142,027, BID BY MCRAE BROS., THE NEXT LOWEST BIDDER.

The board asked Corporation Counsel A. C. Van Soelen to decide whether the contract may be split between McRae Bros., second low bidder, and Hendrickson-Alstrom; whether a new set of bids must be called for and, if so, whether Hendrikson- Alstrom's bid bond of $20,000 would have to be forfeited. Other items in the Hendrickson-Alstrom low bid totaled $170,227. [171]

THE SEATTLE DAILY TIMES, #6, September 25, 1934 — P. 2, Col. 2. C.L.S.

LIGHT VOTE ON $701,000 SCHOOL LEVY EXPECTED

Voters of the Seattle School District were deciding the fate of the additional three-mill tax levy FOR SEATTLE SCHOOLS TODAY, BUT A LIGHT VOTE ON THE $701,000 REVENUE MEASURE WAS FORECAST, DESPITE INTENSIVE CAMPAIGNS FOR AND AGAINST IT.

Polls opened at 8 o'clock this morning, and will stay open until 8 o'clock tonight. As voters have but the single proposition to act upon, County Auditor George A. Grant said, returns should be fairly complete two hours after voting ceases.

During the twelve hours of voting state liquor stores are required by law to close, with sale of beer and wine also prohibited in the Seattle district and in sixty-seven of the ninety-seven school districts in King County, where similar additional levies are up for voters' sanction.

THE STATE LAW WHICH REQUIRES ADDITIONAL SCHOOL TAXES TO BE SUBMITTED AT SPECIAL ELECTIONS MAKES A THREE-FIFTHS MAJORITY OF THOSE VOTING NECESSARY FOR APPROVAL.

THE SEATTLE TIMES, #6, September 25, 1934 — P. 5, Col. 1. C.L.S.

BOOKLET TELLS HOW TO DETECT, HALT PARALYSIS

THOUSANDS OF COPIES OF A BOOKLET, WRITTEN BY DR. IRA C. BROWN, PUBLIC SCHOOL MEDICAL DIRECTOR, DESCRIBING MEANS OF PREVENTING AND DETECTING INFANTILE PARALYSIS, WILL BE DISTRIBUTED FREE TO PARENTS OF ALL PUBLIC SCHOOL CHILDREN, DR. BROWN ANNOUNCED YESTERDAY.

NO CASES HAD BEEN REPORTED SINCE FRIDAY.

Coincident with publication of the booklet, Dr. Brown said he was planning with state, county and city health authorities and the King County Medical Society to form an organization which he believes will be able to prevent recurrence of this year's spread of infantile paralysis.

The organization plan includes a campaign to have physicians familiarize themselves and their patients with symptoms of infantile paralysis and to bring about early diagnosis of cases of suspected paralysis.

The plan also includes preparation for hospitalization of paralysis cases, so that, whenever cases develop, they can immediately be given expert care; arrangement for blood transfusions and arrangements to have respirators available for paralysis cases in which patients' lungs are affected.

"We will use the parents as the first line of de-

fense," Dr. Brown said. "We will be all prepared beforehand to head off any start of an infantile paralysis epidemic. We hope to have an organization arranged, so all we will have to do is put it into action."

Dr. Brown's booklet, which will be distributed to parents through the schools, states that prospects are that infantile paralysis can be controlled in a few years like diphtheria is.

The booklet describes paralysis symptoms and urges parents to summon a physician and notify school medical authorities at the first sign of illness; to keep other children away from any child [172] suspected of having the disease; to boil all dishes and towels and to train children to keep their hands clean and follow other elementary sanitary rules.

Early treatment usually prevents actual *pra*lysis in the disease, according to the booklet.

Dr. Brown said the health rules in the booklet apply also to other communicable diseases and should aid in preventing spread of illness among school children. He said Seattle schools have only a 3 per cent absentee average, compared with 7 per cent in many other cities.

THE SEATTLE DAILY TIMES #6, September 28, 1934 — P. 1, Col. 6. B.H.S.

BOLCOM, 2 SONS
ESCAPE AS FIRE
DESTROYS HOME

WILLIAM BOLCOM, PRESIDENT OF THE

BOLCOM-CANAL LUMBER COMPANY AND HIS TWO SONS ESCAPED IN THEIR NIGHT CLOTHES WHEN FIRE DESTROYED THEIR LUXURIOUS FIFTEEN-ROOM HOME AT 8059 32ND AVE. N.W., OVERLOOKING PUGET SOUND NEAR THE NORTH CITY LIMITS, LATE LAST NIGHT.

Fire Batallion Chief Leo McCombs estimated the loss at $50,000 covered by insurance.

The one-story frame building burned so rapidly that nothing was saved, not even the Bolcom's clothing. They were at a hotel today.

"I didn't even have time to get my glasses and my watch and my money," Bolcom said.

The fire, discovered about 11:40 o'clock, was visible over the North End and attracted about 1,200 spectators.

Cause of the fire had not been determined today. Bolcom said he could not turn on the lights when he was awakened by smoke.

McCombs estimated the damage at $20,000 to the building and $30,000 to the furniture, which included a $5,000 piano and an heirloom lamp valued at $400.

Bolcom and his sons, Perry, 18 years old, and Robert, 23, were sleeping in one wing of the L-shaped house. The fire started in the other wing and had gained headway before Bolcom awoke. He aroused his sons and they all ran out in their night clothes, only Perry pausing for his trousers.

THE SEATTLE DAILY TIMES, #6, September 28, 1934 — P. 1, Col. 3. B.H.S.

BISHOP'S POWER QUESTIONED IN MOOK OUSTER

What power did Bishop S. Arthur Huston have to oust THE REV. CHARLES STANLEY MOOK AS RECTOR OF TRINITY EPISCOPAL PARISH?

OVER THAT QUESTION — NEVER BEFORE PROPOUNDED TO A CIVIL COURT — ATTORNEYS IN SUPERIOR JUDGE HOWARD M. FINDLEY'S COURT TODAY WERE MAKING THEIR FINAL ARGUMENTS IN THE CLOSING OF THE SPECTACULAR COURT BATTLE WHICH MR. MOOK IS MAKING TO KEEP THE RECTORSHIP HE HAS HELD FOR TEN YEARS.

Ethan Allen Peyser, attorney for Mr. Mook, yesterday began the arguments with a quiet but biting attack on Bishop Huston's own knowledge of the canons and constitution of his church.

"Bishop Huston's testimony was most disappointing," Peyser told the court as the bishop sat listening. "He knows what his position is, but he doesn't know just why." [173]

The bishop had contended that he had the power to oust Mr. Mook and needed to confer with no one before taking action.

"Through a misconception of the canons, the bishop blunders into his final judgment," Peyser

said. "Although, Your Honor, the bishop should naturally be the most informed man in his diocese on the canons and constitution of his church, I submit that his knowledge of this is no greater, and his qualifications no better than the clergyman who took the stand here."

The clergymen to whom Mr. Peyser referred were the Very Rev. John D. McLauchlan, dean of St. Mark's Cathedral; the Rev. Dr. George Weiland, rector of Epiphany Parish and chairman of the standing committee of the diocese; the Rev. Dr. Paul James of Christ Church, and the Rev. Dr. Sidney H. Morgan of St. Paul's Church. All had testified the bishop did not have power without the consent of his standing committee to remove the rector.

"These men said in contradiction of the bishop that this has never been done before and can't be done," Peyser told the court.

Peyser said he believed that should the court hold with Mr. Mook, the vestry would resign, to give the church a "new chance for harmony."

Peyser said that should the vestry resign, the parishioners could elect a new vestry which would reflect their actual desires as to whether or not they wanted Mr. Mook to remain.

Peyser referred to the clergymen who had testified for Mr. Mook as "unwilling witnesses," saying it was difficult for them to face their bishop in a courtroom and contradict him on church law.

"Not everything which Mr. Mook has done has been tactful or wise," Peyser said. "But I don't

believe some members of the vestry were overwhelmed with wisdom or tact."

The court fight moved temporarily yesterday to the bedside of Dr. McLauchlan.

Dr. McLauchlan, one of the ranking officers in the the Episcopal Diocese of Olympia, became ill after Thursday's court session and was confined to his bed at his home, 1124 Harvard Ave.

The dean contradicted Thursday's testimony by the bishop, that Bishop Huston had power to remove Mr. Mook as rector.

Judge Findley, attorneys and a court stenographer went from his court to Dr. McLauchlan's home to hear the testimony.

So anxious was Dr. McLauchlan to take the stand that he offered to leave his bed and go to the courtroom when Peyser telephoned him about the court's contemplated visit to his bedside.

THE BELLINGHAM HERALD, A.M., September 29, 1934—P. 5, Col. 6 C.L.S.

EAGLES ARE HOSTS

Local Lodge Entertains District's Members

THE BELLINGHAM EAGLES LODGE *played the role of* HOST *to other lodges of* DISTRICT NO. *7, embracing* SKAGIT AND WHATCOM COUNTIES, at a meeting at the Eagles hall *Friday night.*

A downtown STREET PARADE, *which was lead by the Eagles band, and the ladies' auxiliary drill team, started off the evening.*

STATE PRESIDENT MURRAY E. BLAIRE, OF VANCOUVER, B. C., AND HENRY WEBORG, OF EVERETT, GRAND LODGE INSIDE GUARD, WERE PRESENT AND ADDRESSED *the lodge members.* A CLASS OF TWENTY FIVE CANDIDATES WAS INITIATED, Secretary William Knapton reported. [174]

The largest delegation of visitors came from Anacortes. They numbered 115 lodge members. Other lodges represented and the number attending were as follows: Sedro-Woolley 75, Mount Vernon 25, Concrete 10 and Blaine 10.

THE SEATTLE POST INTELLIGENCER, September 29, 1934—P. 9, Col. 1. C.L.S.

MOOK TRIAL ENDS;
COURT TAKES CASE
UNDER ADVISEMENT

Attorney Eloquently
Defends Bishop's
Ouster Acts

RULES CITED

Intense Debate at Church
Parley Predicted

By R. B. Bermann

Superior Judge Howard M. Findley tackled the

job last night of determining whether the Rt. Rev. S. Arthur Huston, Episcopal bishop of Olympia, acted within his legal rights in acceding to the request of the vestry of Trinity Parish to remove the Rev. Charles Stanley Mook as rector.

ATTORNEYS ON BOTH SIDES, IN THEIR FINAL ARGUMENTS, CONCEDED THAT NEVER BEFORE HAD A SECULAR COURT BEEN ASKED TO PASS ON A CASE IN POINT. AND IT WAS FREELY PREDICTED THAT, REGARDLESS OF THE JUDGE'S DECISION, THE TRIAL WILL RESULT IN IMPASSIONED DEBATES AT THE NEXT GENERAL CONVENTION OF THE CHURCH—and POSSIBLY IN A RECODIFICATION OF CANONS.

In taking the matter under advisement, Judge Findley announced that he would reach his decision as soon as the importance of the case and his judicial duties would permit.

A short time before the judge had listened to an eloquent defense of the bishop by Ivan L. Hyland, speaking not only as an attorney but also as chancellor of the diocese.

Hyland accused Ethan Allen Peyser, chief counsel for the Rev. Mr. Mook, of unfair tactics in telling the court that, because he had brought in no expert witnesses to corroborate his interpretation of his canonical authority, it could be assumed that the bishop was unable to find a single clergyman in the diocese who would support him.

"I personally assume all responsibility for our

failure to bring in expert witnesses," said Hyland. "I have maintained from the first that the question of interpreting plain English is up to no one but the court."

Genuine ecclesiastical weight was given Hyland's remarks by the fact that, in addition to being one of the ranking officers of the diocese, he has in his veins the blood of both modern and ancient clergymen. He prefaced his argument by asserting that he was a lineal descendant of Bishop Ridley, burned at the stake by Queen Mary, and that his father, an Episcopal priest, started Trinity Parish in 1865.

"I want to make it clear that the bishop's action was neither arbitrary nor autocratic," Hyland observed. "He was simply exercising the mantle that has flowed down upon him from the very start of the church by right of apostolic succession, and no civil court has the authority to deprive him of this mantle." [175]

In any event, Hyland maintained, the bishop had no part in the suit and should never have been brought unwillingly into court.

E. P. Whiting, who, with Grinstead, Laube and Laughlin, represented the vestry in the trial, argues his case in the morning.

While protesting that he had only the highest respect for the clergyman who opposed the bishop on his interpretation of canonical law, he declared that their testimony should have no weight in a civil court.

"They were simply saying what they thought the canons of the church should be," Whiting declared.

"If they want to change the canons they should voice their arguments on the floor of the general convention of the church and not in this court."

Earlier in the day, Joseph A. Barto, attorney for the Trinity parishioners intervening on the rector's behalf, completed his argument, maintaining that his clients had a property right at stake because of the value of the parish holdings and of the contract with the Rev. Mr. Mook.

The trial concluded with arguments by John D. Carcano, Peyser's associate counsel, and a few closing words by Peyser.

THE SEATTLE POST INTELLIGENCER, September 29, 1934 — P. 16, Col. 6. C.L.S.

FARLEY INVITES SCHWELLENBACH

Lewis B. Schwellenbach, Democratic nominee for United States senator, YESTERDAY RECEIVED A TELEGRAPHIC INVITATION TO GO TO WASHINGTON, D. C., FOR A CONFERENCE WITH THE NATIONAL ADMINISTRATION.

THE INVITATION FOLLOWED SENATOR HOMER T. BONE'S CALL THURSDAY UPON PRESIDENT ROOSEVELT, DESCRIBING SCHWELLENBACH AS A "STAUNCH SUPPORTER" OF THE NEW DEAL.

AFTER SCHWELLENBACH HAD LEFT SEATTLE YESTERDAY FOR EPHRATA, TO ATTEND A MEETING OF THE COLUMBIA

BASIN COMMISSION, A TELEGRAM WAS RECEIVED AT HIS CAMPAIGN OFFICES HERE FROM JAMES A. FARLEY, POSTMASTER GENERAL AND CHAIRMAN OF THE DEMOCRATIC NATIONAL COMMITTEE, READING:

"AT YOUR EARLIEST CONVENIENCE WOULD APPRECIATE YOUR COMING TO WASHINGTON FOR CONFERENCE WITH ADMINISTRATION. REGARDS AND BEST WISHES."

The telegram was forwarded to Schwellenbach at Ephrata. Aids at his offices said he had left here planning to continue from Ephrata on an Eastern Washington tour, and they lacked knowledge as to whether he will change his plans.

SEATTLE POST INTELLIGENCER, September 29, 1934 — P. 16, Col. 7. C.L.S.

DORIAN E. TODD WINS IN COURT

STATE REPRESENTATIVE DORIAN E. TODD, HIGH MAN IN THE THIRTY-FIFTH DISTRICT DEMOCRATIC PRIMARIES, YESTERDAY WON HIS FIGHT AGAINST ATTEMPTED DISQUALIFICATION.

SUPERIOR JUDGE CHESTER A. BATCHELOR, AFTER A BRIEF HEARING DISMISSED A SUIT BROUGHT BY DR. H. BRADLEY WRENN, PRESIDENT OF THE THIRTY FIFTH DISTRICT DEMOCRATIC CLUB,

SEEKING TO DISQUALIFY TODD ON THE GROUNDS THAT HE WAS A FEDERAL OFFICER, AND AS SUCH INELIGIBLE [176] FOR A STATE LEGISLATIVE POST, AND ALSO CHARGING THAT HE HAD NOT PERSONALLY SIGNED HIS DECLARATION OF CANDIDACY.

STATE REPRESENTATIVE JOSEPH D. ROBERTS, TODD'S COLLEAGUE FROM THE DISTRICT IN THE LAST SESSION, WHO WOULD HAVE SUCCEEDED TO THE NOMINATION IF THE ACTION HAD BEEN SUCCESSFUL, WATCHED PROCEEDINGS FOR A TIME, BUT TOOK NO PART IN THEM.

Judge Batchelor held that Todd's employment for several months this year in charge of a small bureau of fisheries boat in Alaska did not make him a federal "officer" and that Wrenn had not proved his contention that Todd failed to sign his declaration.

Bert A. Northrop appeared as attorney for Wrenn, while State Senator Evert Arnold, who represented the district in the upper house during recent sessions of the legislature and Ivan Merrick another Democratic lawyer, were Todd's attorneys.

SEATTLE POST INTELLIGENCER, October 1, 1934 — P. 2, Col. 7. C.L.S.

TODAY'S NEWS SUMMARY

Local

Girl's escort shoots and critically wounds bandit

who attempts to hold up couple in car. (Page 1, Col. 1, Part 1.)

Girl, three, dies after being struck by car on street lined with illegally parked automobiles. (Page 1, Col. 1, Part 2.)

SMALL REGISTRATION POINTS TO LIGHT FALL VOTE. (Page 1, Col. 8, Part 2.)

CITY BUDGET, TOTALING TWENTY MILLION DOLLARS, UP FOR FINAL ACTION. (Page 3, Col. 1, Part 1.)

Woman to take lead in today's Community Fund luncheon. (Page 1, Col. 4, Part 2.)

UNIVERSITY OF WASHINGTON OPENS THIS MORNING. (Page 1, Col. 5, Part 2.)

PLEDGES TO TWENTY FIVE UNIVERSITY OF WASHINGTON FRATERNITIES ANNOUNCED. (Page 13, Col. 7, Part 20.)

Northwest

ATTORNEY DEMANDS AUDIT OF STATE PENITENTIARY BOOKS FOLLOWING OTEY EXPOSE. (Page 1, Col. 3, Part 1.)

PLANS COMPLETED FOR REBUILDING OF NOME, ALASKA, AFTER THREE MILLION DOLLAR FIRE. (Page 2, Col. 6, Part 1.)

NATIONAL

PRESIDENT ROOSEVELT OUTLINES PLAN FOR INDUSTRIAL TRUCE. (Page 1, Col. 8, Part 1.)

PRESIDENT GREEN RENEWS EFFORT TO AVERT A. F. OF L. RIFT OVER OUSTER OF THREE AFFILIATED GROUPS. Page 2, Col. 1, Part 1.)

SEVENTY PASSENGERS TAKEN FROM SINKING STEAMER NEAR WOODS HOLE, MASS. (Page 1, Col. 6, Part 1.)

COL. LINDBERGH PARTLY IDENTIFIES BRUNO HAUPTMANN AS MAN HE SAW NEAR CEMETERY NIGHT RANSOM WAS PAID. (Page 1, Col. 5, Part 1.)

FOREIGN:

TEN MILLION CHILDREN GIVEN VOTE IN COMING RUSSIAN GENERAL ELECTIONS. (Page 1, Col. 2, Part 1.)

PRINCESS MARINA'S APPROACHING MARRIAGE TO PRINCE GEORGE STIRS BITTER SOCIAL FIGHT AMONG EUROPEAN ROYALTY AND EX ROYALTY. (Page 1, Col 2, Part 1.)

CHANCELLOR HITLER TELLS 700,000 GERMAN FARMERS OF GAINS UNDER NAZI RULE. (Page 15, Col. 3, Part 1.) [177]

THE SEATTLE DAILY TIMES—#6, October 1, 1934—P. 1, Col. 5 H.E.R.

WOUNDED VICTIM SHOOTS ROBBER AFTER HOLD-UP

WHILE HIS COMPANION, MISS AGNES L. TRONSDALE, 24 YEARS OLD, DARINGLY RAN FOR HELP, WILLIAM A. MCKENZIE, 35-YEAR-OLD SALES ENGINEER, 719 N. 85TH ST., PURSUED A ROBBER EARLY YESTERDAY AND CAPTURED HIM AFTER SHOTT-

ING THE HOLD UP MAN THREE TIMES.

THE ROBBER, IDENTIFIED BY POLICE AS HOUSTON WILLIAM TURPIN, 28-YEAR OLD exconvict, *railled* today at City Hospital and physicians said he probably would live. Turpin was wounded critically with three bullets in his chest, after he stabbed McKenzie.

The robbery occurred in front of Miss Tronsdale's home, 422 11th Ave. N., as she and McKenzie sat in his automobile after returning from a dance.

Turpin stepped up to the car, McKenzie said, and ordered: "Stick 'em up, Buddy! Hand over your money." When McKenzie hesitated, the robber stabbed him in the face and hand with a pocket knife and grabbed McKenzie's wallet, containing $10.

As the robbery started, Miss Tronsdale jumped from the car and ran to telephone for help.

McKenzie seized a pistol he had in his car and shot five times as he chased Turpin. Turpin reached his parked automobile, but was unable to start *it was* caught there by McKenzie. Police arrived a few moments later and took both men to City Hospital.

Turpin told Detective Lieut. Richard F. Mahoney he had been "going straight" and helping his mother operate a Capitol Hill apartment house since his parole from the state prison in June.

Saturday night, however, Turpin said, he had a few drinks, borrowed a friends' car and committed the hold-up.

Turpin called for his mother after being taken to the hospital.

Police records show Turpin was sent to a parental school when only 13 years old. In 1927 he was sent to the state reformatory to serve from one to five years for second degree burglary, but was paroled in one year. In February, 1932, he was sent to prison to serve from five to ten years on a robbery charge. He was paroled June 29.

THE BELLINGHAM HERALD, October 1, 1934—P. 6, Col. 5 H.E.R.

SHORT WEEK URGED

Green Speaks in Favor of Distribution of Work

SAN FRANCISCO, Oct. 1.—(AP)—Declaring the most important problem confronting the American Federation of Labor is unemployment, President William Green proposed at the opening of the organization's fifty-fourth annual convention here today a "remedy by THE DISTRIBUTION OF THE WORK AVAILABLE AMONG ALL THOSE ABLE AND WILLING TO WORK."

Green's declaration in favor of a thirty-hour week was greeted by hearty applause from the packed convention hall.

"Those opposing the thirty-hour week offer no other remedy," he said. "I CAN ONLY REPEAT THE CHALLENGE I HAVE MADE BEFORE—

LET THEM OFFER US SOMETHING BETTER AS A REMEDY." [178]

Although President Roosevelt's administration was said by Green to have made definite progress in the unemployment program the labor president said much remains to be done and "the fact remains it has not gone far enough."

He said it was not enough to reduce the "army of unemployed by 4,000,000."

"We must overcome the problem so that work will be available for every worker willing to work," he stated.

Through the "wider distribution of the earnings of industry through the payment of higher wages, the buying power of the masses would be increased and we would have a balance between consumption and the facilities of production," he added.

"It would have been better that we never had a scientist or inventor than to have created a vast army of unemployed.

"But do not mistake the attitude of the American Federation of Labor. It is not opposed to progress nor to the mechanization of industry. It is opposed to the displacement by machinery of thousands of workers."

Pointing out that labor had won in Congress the right to organize, and the right of collective bargaining, particularly as set forth in section 7A in the NRA, Green declared:

"Notwithstanding that fact, employers in many instances have carried on the fight.

"The strikes throughout the nation can be directly traced to hostile employ*es* who refuse to permit their workers to engage in collective bargaining."

Among the first speakers as the convention opened was Edward Vandeleur, president of the San Francisco Labor council, and a leader in the recent general strike here.

Vandeleur told the delegates that all unions retained their contractional relations at the end of the strike.

"This shows to the world that the solidarity and strength of labor in San Francisco is greater than in any other city in the coun*ty*," Vandeleur declared.

Vandeleur, acting as chairman, introduced *Pal* Scharrenberg, secretary of the California State Federation of Labor.

"There are only two kinds of unionism we don't want," Scharrenberg declared. "We don't want company unionism and we don't want Communist unionism."

One of the things labor must do, he said, was to solve the science of distribution.

"We will not resort to violent tactics and we will not embrace Communism," he said. "But we must attempt to bring about a revolution so that there will be enough for all.

"So we want to solve the science of distribution, so we won't work hard for years to pile up plenty and then have to leave it on the shelf."

SEATTLE POST INTELLIGENCER, October 8, 1934—P. 4, Col. 2 C.L.S.

TODAY'S NEWS SUMMARY

Local

WOMAN MISSING SINCE SATURDAY FOUND DEAD AFTER MYSTERIOUS PLUNGE OVER CLIFF. (Page 1, Col. 2, Part 1.)

AUTOMOBILE PLUNGES INTO LIVING ROOM OF QUEEN ANNE HILL HOME. (Page 2, Col. 4, Part 1.) [179]

ONE KILLED, SEVERAL INJURED IN WEEK END TRAFFIC ACCIDENTS. (Page 3, Col. 8, Part 1.)

VOTERS URGED TO REGISTER THIS WEEK END FOR GENERAL ELECTION NOVEMBER 6. (Page 1, Col. 5, Part 2.)

VIGOROUS CAMPAIGN AGAINST INITIATIVE 94 OPENED BY WASHINGTON EDUCATIONAL ASSOCIATION. (Page 3, Col. 1, Part 1.)

Community Fund begins final advance toward $590,769 goal today with $250,000 still to be raised. (Page 5, Col. 6, Part 1.)

NORTH END BAKER'S STATEMENT MAY DETERMINE CHARGE TO BE FILED AGAINST CHARLES D. DUKE FOR SLAYING OF OSTEOPATH. (Page 4, Col. 1, Part 1.)

Seattle RESIDENTS URGED TO INSPECT FURNACES AS PART OF NATIONAL FIRE PREVENTION WEEK OBSERVANCE. (Page 1, Col. 6, Part 2.)

FOREIGN

French CRUISERS AND TURKISH FORT

EXCHANGE SHOTS NEAR SMYRNA. (Page 1, Col. 3, Part 1.)

WITH MORE THAN 500 DEAD, SPAIN'S REVOLUTION APPEARS BROKEN. SPORADIC FIGHTING CONTINUES. (Page 1, Col. 6, Part 1.)

THREE SOVIET OFFICIALS SENTENCED TO DEATH FOR PARTS IN "ORIENTAL ORGIES. (Page 2, Col. 5, Part 1.)

JOHN LABATT, WEALTHY BREWER, SPENDING FORTUNE TO PROTECT HIMSELF AND FAMILY FROM KIDNAP REPRISALS. (Page 1, Col. 5, Part 1.)

NATIONAL:

INDICTMENT OF RICHARD HAUPTMANN FOR MURDER WILL BE ASKED OF A NEW JERSEY GRAND JURY TODAY. (Page 1, Col. 4, Part 1.)

President GREEN PLEADS FOR SETTLEMENT OF LABOR FIGHTS BY PRINCIPLES OF CHRISTIANITY. (Page 2, Col. 8, Part 1.)

ABANDONMENT OF FRATERNITIES AT YALE FORECAST. (Page 1, Col. 5, Part 1.)

THE SEATTLE DAILY TIMES—#6, October 8, 1934—P. 1, Col. 6 C.L.S.

N. R. A. CRITICISM IS ISSUE BEFORE A. F. L. MEETING

By Associated Press.

SAN FRANCISCO, Monday, Oct. 8.—WITH

BATTLES IMMINENT ON A PROGRAM INCLUDING SETTLEMENT OF INTERAL STRIFE, CRITICISM OF THE NATIONAL RECOVERY ADMINISTRATION AND DECISION ON THE THIRTY-HOUR-WORK-WEEK PROPOSAL, THE FIFTY-FOURTH ANNUAL AMERICAN FEDERATION OF LABOR CONVENTION ENTERS ITS SECOND WEEK here TODAY.

Battle lines were tightly drawn on most of the controversial issues laid before the convention last week. As each of them is brought to the floor, heated debates are expected. From the action of the convention future federation policies probably will emerge.

THE SEATTLE TIMES—No. 6, October 8, 1934 —P. 5, col. 8 C.L.S.

POLICE BLAME LACK OF LIGHT IN AURORA CRASH

THE FACT THAT A STREET LIGHT WAS NOT BURNING AT AURORA AVENUE AND ALOHA STREET WAS BLAMED BY POLICE TODAY AS A CONTRIBUTORY CAUSE [180] TO AN ACCIDENT IN WHICH ANTONE NOVAK, 35 Years old, 611 25th AVE. N., WAS INJURED CRITICALLY WHEN STRUCK BY AN AUTOMOBILE LAST NIGHT.

NOVAK WAS HIT BY A CAR DRIVEN BY

J. M. SEEK, 42, OF 6756 11TH AVE. N.W. THE INJURED MAN WAS TAKEN TO HARBORVIEW COUNTY HOSPITAL. POLICE ARE INVESTIGATING TO LEARN WHO PUT THE LIGHT OUT OF COMMISSION.

THE COUNTY'S 1934 TRAFFIC TOLL MOUNTED TO 119 DEAD EARLY YESTERDAY, WHEN GEORGE SCHULTZ, 29, OF EAST AUBURN, WAS KILLED WHEN HIS AUTOMOBILE HIT A BANK AT WEBB'S CORNER ON THE SEATTLE-TACOMA HIGHWAY. Chief Deputy Coroner W. H. Corson said Schultz and his brother, Herman Schultz, were enroute to Tacoma from Auburn. Herman was not hurt.

Six persons were injured in a collision early yesterday in Aurora Avenue at North 105th Street between automobiles driven by Frank English, 806 E. 66th St., and William Bennett, 3526 Ashworth Ave.

English's sister-in-law, Miss Genevieve Peterson, 20, suffered injuries that necessitated amputation of her left hand at Seattle General Hospial. Bennett and English and the latter's other passengers Mr. and Mrs. Jack Kovack, Mayflower Hotel, and John H. Willers, 7211 Second Ave. N.W., all suffered minor injuries.

Mrs. C. H. Whitworth, 62, of Puyallup, suffered head cuts last night when a sedan driven by her husband collided with a bakery truck at Third Avenue and Cedar Street. She was taken to Seattle General Hospital.

THE BELLINGHAM HERALD, October 10, 1934
—P. 1, Col. 2 C.L.S.

LA CONNER MAN DIES AS CARS COLLIDE

Bernard Leaf, 32, Ship Carpenter, Instantly Killed—Two Others Seriously Injured

Pedestrian is Victim

Eugene Forrest, 72, Anacortes Crushed to Death

(Special to The Herald)

MOUNT VERNON, Oct. 10.—FOG, *hanging heavy* OVER SKAGIT COUNTY highways Tuesday night and Wednesday morning, *was blamed for two fatal automobile accidents,* one of which also sent two men to the Mount Vernon hospital seriously injured.

BERNARD LEAF, 32, LACONNER ship carpenter, *met instant death* AT 8 A. M., WEDNESDAY, WHEN HIS CAR COLLIDED head-on WITH A MACHINE DRIVEN BY RODNEY NELSON, 15, OF LACONNER, ONE-HALF MILE SOUTH OF LACONNER. YOUNG NELSON AND WEBSTER ALLEN, WHO WAS RIDING WITH LEAF, WERE BADLY *hurt.*

EUGENE FOREST, 72, OF SUMMIT PARK, NEAR ANACORTES, W A S F A T A L L Y CRUSHED AT ABOUT 10 P. M. TUESDAY, AND DIED within AN HOUR after he had been HIT BY A BEER-LADEN TRUCK almost in

front of the Naulph Service station NEAR ANACORTES.

Leaf and Allen were returning home after an early morning hunting trip. Young Nelson was on his way to his father's home on the Charles Gaches place to pick up some children and take them to school. Kenneth [181] Schlafer, of La Conner, came upon the two demolished cars on the highway, apparently a few minutes after the accident. He drove back to La Conner for assistance and the injured man and boy were hurried to the hospital at Mount Vernon. Schlafer said the fog was very thick at the time.

Fulton, driver of the beer truck owned by Ernest Omstead, said he dimmed his lights in passing another car and when he brightened the lights again Forrest was in front of his car. He swerved the truck sharply to avoid hitting the elderly pedestrian, he said, but the rear end of the machine caught Forrest. The victim of the mishap, his chest crushed, died soon after reaching the Anacortes hospital. The widow and eleven grown children survive. Officers said that the truck wheel marks indicated Fulton had made a desperate effort to avoid hitting the aged man.

Leaf was employed as a ship carpenter by the Dunlap Towing Company of La Conner. He was married to Miss Hazel Joy, of Anacortes, in 1923. In addition to the widow, surviving relatives include a brother, Anselm, of La Conner, and three sisters, Mrs. Gunnar Ashland and Mrs. Harold Johnson, of La Conner, and Mrs. Axel Anderson of Skagit City.

THE BELLINGHAM HERALD, October 10, 1934—P. 1, Col. 7 C.L.S.

LIQUOR SALES LARGE

State Stores Make Profit; August Sales Here $13,129

OLYMPIA, OCT 10.—(AP)—State liquor stores and agencies sold *$683,057 worth of liquor during September,* THE MONTHLY FINANCIAL REPORT OF THE WASHINGTON LIQUOR CONTROL BOARD REVEALED TODAY. *August sales totaled $565,548.*

Gross revenues of the board, up to and including September 30, aggregated $3,797,067, or $2,903-760 from the sale of liquor, $81,202 from permits, $225,031 from licenses, and $587,074 from the state beer tax.

The net profit for the same period amounted to $1,127,244, the total operating expenses, $387,336.

THE BOARD NOW IS OPERATING FORTY-FOUR STORES AND EIGHTY-THREE AGENCIES. Board members pointed out that the increase in liquor sales and in the number of retail outlets indicates that illegal competition is becoming more and more difficult and in many instances is being eliminated.

The sales volumes of various stores during September were:

Seattle No. 1, $67,380; Seattle No. 2, $11,265; Seattle International, $12,601; Seattle Queen Anne, $9,287; Seattle Columbia City, $2,318; Seattle Broadway, $6,018; West Seattle, $3,028; Spokane

No. 1, $82,019; Spokane No. 4, $12,603; Tacoma, $37,711; Bellingham, $13,129; Everett, $10,239; Yakima, $29,957; Aberdeen, $10,879; Walla Walla, $11,319; Vancouver, $14,965; Olympia, $9,706; Wenatchee, $15,705; Longview, $5,876; Port Angeles, $6,765; Bremerton, $15,341; Centralia, $3,738; Raymond, $4,464; Mount Vernon, $4,631; Clarkston, $19,203; Colfax, $7,797; Ellensburg, $5,868; Ballard, $15,564; South Tacoma, $7,109; Anacortes, $3,199; Renton, $4,106; Chehalis, $3,746; Kelso, $4,470; Camas, $2,014; Puyallup, $3,723; Shelton, $3,149; Port Townsend, $2,464; Enumclaw, $2,447; Cle Elum, $2,458; Auburn, $2,030; Pasco, $3,667; Hoquiam, $4,161; Toppenish, $5,844; Colville, $3,225.

Store sales for the month totaled $6-6,669; agencies, $72,317. [182]

THE SEATTLE DAILY TIMES—#6, October 11, 1934 — P. 1, Col. 3. H.E.R.

RADIOS, STOVES, WINDOWS CRASH; MAN IS JAILED

—

In a mysterious attack on the United Furniture Company store, 1521 Second Ave., a young man smashed two plate glass windows at 3:45 O'CLOCK THIS MORNING AND THEN ENTERED THE STORE AND UPSET TWO COOK STOVES, SMASHED TWO MIRRORS AND SEVERAL FLOOR LAMPS AND BROKE SEVEN RADIOS.

THE MAN, WHO GAVE HIS NAME AS LESTER E. TAFT, 24 YEARS OLD, A LABORER, WAS FOUND UNDER A DAVENPORT .IN THE STORE AND WAS JAILED WITHOUT CHARGE.

Leon Greenbaum, store manager, estimated damage to the furniture at $400. He said he did not know Taft and knew no reason for the attack. Police said Taft refused to talk.

Sergt. L. H. Graham found Taft after a merchant patrolman, on duty nearby, reported hearing "an explosion." Police said the "explosion" apparently was the sound of the window smashing.

Sergeant Graham said Taft had upset a 400-pound cook stove in the display window.

Taft is thought to have come here from Spokane.

THE SEATTLE DAILY TIMES—#6, October 11, 1934—P. 1, Col. 4 H.E.R.

TOELLNER TELLS NIGHT WEDDING ARRANGEMENT

—

How the Pierce County auditor's office works with Justice August Toellner, WHO PERFORMED SEATTLE'S LATEST "GIN MARRIAGE," WAS EXPLAINED TODAY BY CHIEF DEPUTY PROSECUTOR EMMETT G. LENIHAN, AFTER TOELLNER'S RELUCTANT VISIT TO THE PROSECUTOR'S OFFICE YESTERDAY AFTERNOON.

MIDNIGHT MARRIAGES—WHICH RECORDS OF AFFIDAVITS ON FILE WITH THE PIERCE COUNTY AUDITOR SHOW TOELLNER PERFORMS ON AN AVERAGE OF NEARLY ONE A WEEK—ARE MADE POSSIBLE BY A "WORKING arrangement" THE DUWAMISH JUSTICE HAS WITH THE AUDITOR, LENIHAN SAID.

THE REPORTED "ARRANGEMENT" WAS BROUGHT TO LIGHT AS LENIHAN CONTINUED HIS INVESTIGATION INTO THE "WEDDING" OF DOROTHY LEANNE HURLBURT, PRETTY 22-YEAR-OLD STENOGRAPHER, AND GEORGE P. BERNSEE, WHOSE LONG PRISON RECORD WAS REVEALED BY POLICE SHORTLY AFTER THE CEREMONY WHICH TOELLNER PERFORMED just as dawn began to break Monday morning.

Justice Toellner, who held stanchly to his story that the participants in the wedding were as "sober as judges," told how he roused Pierce County Auditor C. H. Renschler at night and paid him $5 for his trouble.

"I telephone to Tacoma," Lenihan said Toellner told him, "and have the auditor come down and open up the office for me. Then my wife or I go with the couple and present the affidavit filled out in my office for the license."

"He doesn't get up for you, for nothing, does he," Lenihan said he asked.

"No," Toellner said. "I usually give him $5 for it."

Toellner had not given any money to the audi'or for the latest "gin wedding," he said, for "I haven't seen him yet." [183]

Strengthening Miss Hurlburt's story that "I was so drunk I don't remember signing anything," Robert W. Steepy, radio entertainer, known as "Arizona Joe," who witnessed the ceremony, characterized the girl as "glassy-eyed" in response to questioning yesterday by Lenihan.

Toellner agreed to visit Lenihan after saying earlier yesterday that the deputy prosecutor could swear out a warrant for his arrest if he wanted Toellner to explain.

Lenihan telephoned Toellner saying:

"I want you to come see me about this marriage business out there. I've some very interesting things to show you."

Justice Toellner then asked, Lenihan said, why Lenihan couldn't come to see him.

"I can't," Lenihan replied. "If you want to come in and see me, all right. If you don't say so."

The justice said he would come.

"The "bridegroom," Barnsee, also known as George Pierpont Granger, self-styled "financier," yesterday admitted a long prison record.

Questioning of Streepy, known on the radio as "Arizona Joe," brought the singer's statement that the girl "staggered, had been drinking, was glassy-eyed and 'worse off' than Bernsee" when she was married.

SEATTLE POST-INTELLIGENCER, October 12, 1934—P. 1, Col. 2 C.L.S.

WARRANT OUT FOR JUSTICE TOELLNER IN 'GIN MARRIAGE'

—

Another Midnight Wedding Case Reported

—

$500 Bail Set

—

Nash Asks Board's Authority for Ouster

—

By Lester M. Hunt

CHARGED WITH "SOLEMNIZING AN ILLEGAL MARRIAGE," A WARRANT FOR THE ARREST OF JUSTICE OF THE PEACE AUGUST TOELLNER OF DUWAMISH WAS SWORN OUT LATE YESTERDAY BY CHIEF DEPUTY PROSECUTOR EMMETT G. LENIHAN.

THE ACTION CULMINATED A FOUR-DAY INVESTIGATION OF THE EARLY MORNING "CEREMONY" LAST MONDAY AT WHICH TOELLNER MARRIED GEORGE BERNSEE ALIAS ROBERT PIERPONT GRANGER, FOUR-TIME LOSER EX-CONVICT, TO MISS DOROTHY LEANNE HURLBURT, WHO TOLD

LENIHAN SHE WAS "SO DRUNK I DIDN'T REALIZE WHAT WAS GOING ON."

BAIL WAS SET AT $500 AND JUSTICE TOELLNER, ADVISED BY THE SHERIFF'S OFFICE OF THE WARRANT, DECLARED HE WOULD SURRENDER HIMSELF AS SOON AS HE COULD ARRANGE HIS BOND.

THE ALLEGED OFFENSE IS CLASSED AS A MISDEMEANOR AND UPON CONVICTION CARRIES A FINE OF NOT LESS THAN $100 OR MORE THAN $500.

AT THE SAME TIME AS THE ISSUANCE OF THE WARRANT, COUNTY COMMISSIONER LOUIS NASH ASKED THE PROSECUTOR'S OFFICE IF THE COUNTY COMMISSIONERS WERE EMPOWERED TO REMOVE JUSTICE TOELLNER FROM OFFICE, DECLARING THAT HE WOULD INTRODUCE SUCH A RESOLUTION AT THE NEXT MEETING OF THE BOARD IF HE HAD THE AUTHORITY.

LENIHAN SAID THAT IF CONVICTED, TOELLNER COULD BE REMOVED BY THE COMMISSIONERS FOR MALFEASANCE BUT HE WAS NOT PREPARED TO GIVE AN IMMEDIATE OPINION AS TO WHETHER SUCH ACTION COULD BE TAKEN OTHERWISE.

[184]

A NEW COMPLAINT AGAINST THE JUSTICE FOR ANOTHER CEREMONY CLOSELY PARALLELING THE GRANGER-HURLBURT

EPISODE WAS LODGED WITH LENIHAN YESTERDAY BY W. H. AUSTIN OF 914 E. 65TH ST., WHO SAID HIS SON, WILLIAM, WAS MARRIED TO MISS AMY JAY last January 8 under circumstances almonst identical.

Austin said that the young couple aroused Justice Toellner from bed at the height of a drinking party, signed affidavits, obtained a license in Tacoma and were wedded before dawn almost exactly as were Granger and Miss Hurlburt.

The girl obtained an annulment seven months later from Judge Roscoe R. Smith, who stated in his decision:

"At the time of the ceremony the plaintiff was so intoxicated that she had no comprehension of what she was doing or of the nature or effect of said ceremony."

There was no contest to the annulment.

Lenihan's complaint, filed in Justice of the Peace William Hoar's court, charged that Toellner "did wilfully and unlawfully" marry Bernsee and Miss Hurlburt, the girl "being incapable of consenting thereto for want of sufficient mental understanding."

The complaint was filed after Lenihan checked the records of the Seattle General Hospital, where Miss Hurlburt was treated for a head cut sustained when Bernsee wrecked the asserted stolen car which was his bridal carriage, and in which he drove to Tacoma with Mrs. Toellner to obtain the license.

He said his investigation supported Miss Hurlburt's story.

"Hospital attendants said she was giddy, despite her injury, that they smelled liquor on her and that she gave evidence of having been intoxicated," the prosecutor asserted.

Former Congressman Ralph A. Horr, appearing as attorney for Bernsee in pending action against him for alleged car theft, told Lenihan his client would likewise support Miss Hurlburt's story if called as a witness against Justice Toellner.

Bernsee had previously denied either of the bridal couple was intoxicated, although conceding they had been drinking prior to the marriage idea. They had been acquainted only a few hours.

SEATTLE POST-INTELLIGENCER, October 12, 1934—P. 4, Col. 2-3. C.L.S.

SUMMARY OF DAY'S NEWS

Thursday, October 11, 1934

Local

Prosecutor's office issues warrant for arrest of August Toellner, Duwamish justice of the peace, as outcome of "gin wedding." (Page 1, Col. 2, Part 1.)

John Hamrick to open Orpheum Theatre with film and vaudeville programs. (Page 1, Col. 3, Part 1.)

Mystery of DISAPPEARANCE OF JACK AL-

LEN, SEVEN, SOLVED BY RECOVERY OF HIS BODY IN CANAL, (Page 1, Col. 6, Part 1.)

STATE LIQUOR BOARD CHARGES SPEAKEASIES FLOURISH IN SEATTLE; CITY COUNCIL EFFICIENCY COMMITTEE DELAYS ACTION. (Page 1, Col. 1, Part 2.)

FOUR PHYSICIANS HIT NARCOTIC DEFENSE OF DR. THOMAS P. RATIGAN JR. (Page 5, Col. 1, Part 1.)

WIFE BEATEN BY OFFICER CLAIMS JAILED DENTIST IN EXPLAINING ATTACK ON OFFICER.(Page 3, Col. 5, Part 1.)

SEATTLE'S 1935 TAXES TO SHOW 4-MILL SLASH. (Page 3, Col. 2, Part 1.) [185]

CITY COUNCIL AUTHORIZES J. D. ROSS TO SOUND OUT OTHER CITIES ON POWER PURCHASE PLAN. (Page 3, Col. 8, Part 1.)

NORTHWEST RIVERS AND HARBORS CONGRESS MEETS AT WASHINGTON ATHLETIC CLUB TODAY. (Page 7, Col. 1, Part 1.)

Community Fund drive to continue until money raised to support agencis. (Page 1, Col. 4, Part 2.)

JUDGE MEAKIM defends delay in Royson case. (Page 1, Col. 8, Part 1.)

Northwest

INITIATIVE NO. 94 WILL FORCE NEW TAXES, SAYS STATE TAX COMMISSION CHAIRMAN. (Page 3, Col. 1, Part 1.)

WALLA WALLA MAY GET WERA AID IN

COMPLETING TUBERCULOSIS HOSPITAL. (Page 6, Col. 4, Part 1.)

GRANGE POWER BILL MAY NOT GET SUPREME COURT TEST BEFORE ELECTION DAY. (Page 4, Col. 4, Part 1.)

NATIONAL

RANSOM READY FOR KIDNAPER OF MRS. STOLL, KENTUCKY SOCIETY WOMAN. (Page 1, Col. 4, Part 1.)

INDUSTRIAL UNIONISM, RATHER THAN CRAFT ORGANIZATIONS, FAVORED BY AMERICAN FEDERATION OF LABOR FOR SEVERAL BASIC INDUSTRIES. (Page 4, Col. 1, Part 1.)

LEGISLATION FOR FURTHER DEVALUATION OF DOLLAR FORECAST. (Page 1, Col. 5, Part 1.)

FOREIGN

JUGOSLAVIAN MOBS CRY FOR VENGEANCE AGAINST ITALY BECAUSE OF KING ALEXANDER'S ASSASSINATION. (Page 1, Col. 8, Part 1.)

LONDON HEARS ITALY MOBILIZES TWO ARMY CORPS. (Page 1, Col. 6, Part 1.)

FRENCH MINISTER OF INTERIOR RESIGNS AFTER CRITICISM DIRECTED AGAINST POLICE PROTECTION AFFORDED KING ALEXANDER. (Page 2, Col. 2, Part 1.)

TWO ACCOMPLICES OF SLAIN ASSASSIN SEIZED BY FRENCH. (Page 2, Col. 8, Part 1.)

SEATTLE POST-INTELLIGENCER, October 12, 1934—P. 3, Col. 8 C.L.S.

COUNCIL O.K.'S POLL OF CITIES ON POWER PLAN

—

Body Takes First Action on Superintendent's Proposal; Ross Expresses Confidence

—

FIRST ACTION UPON SUPT. J. D. ROSS' PROPOSAL THAT THE CITY OF SEATTLE PURCHASE THE PUGET SOUND POWER AND LIGHT COMPANY'S SYSTEM WAS TAKEN BY THE CITY COUNCIL YESTERDAY AT THE CONCLUSION OF A PUBLIC HEARING ATTENDED BY MAYOR CHARLES L. SMITH, OTHER CITY OFFICIALS AND A BIG LOBBY OF CITIZENS.

BY UNANIMOUS VOTE, THE COUNCIL AUTHORIZED ROSS TO CONTACT OTHER CITIES SERVED BY THE POWER COMPANY TO ASCERTAIN THEIR ATTITUDE TOWARDS THE PURCHASE PROPOSAL "AND REPORT BACK TO THE COUNCIL."

IN ITS DECISION THE COUNCIL ACTED UPON A SUGGESTION FROM ROSS HIMSELF, WHO DECLARED COOPERATION OF THE VARIOUS CITIES IN THE DISTRICT AFFECTED IS NECESSARY TO MAKE THE PLAN A SUCCESS. [136]

"I BELIEVE THAT WHEN THEY FULLY UNDERSTAND THE PROPOSAL AND ITS BENEFITS THEY WILL LOOK WITH FAVOR UPON IT, BUT IF THEY DON'T I WILL BE THE FIRST TO RECOMMEND ITS ABANDONMENT FOR THE PRESENT, AT LEAST," ROSS SAID.

THE COUNCIL MADE IT PLAIN IN ADOPTING ROSS' RECOMMENDATION THAT BY SO DOING IT WAS NOT COMMITTING ITSELF TO ADOPTION OF THE PURCHASE PLAN, EVEN IF A MAJORITY OF THE CITIES ARE FOUND WILLING TO COOPERATE.

THAT ISSUE, COUNCILMEN DECLARED, WILL NOT BE DECIDED UNTIL AFTER THE PROJECT HAS BEEN STUDIED IN ALL ITS ANGLES AND THE ISSUES INVOLVED THOROUGHLY THRESHED OUT IN CONFERENCES AND PUBLIC HEARINGS, WHERE ALL CITIZENS AND ORGANIZATIONS WILL HAVE OPPORTUNITY TO STATE THEIR VIEWS.

THIS COURSE HAD BEEN urged by Ross at the outset of the hearing, when he said he thought no action should be taken, but a study made, adding a declaration that "we have no desire to put this project forward unless a great majority of our people want it."

For more than an hour Ross outlined his plan

at yesterday's hearing and then submitted to questions from councilmen.

Following the hearing, Ross issued a statement in which he urged the people to "study the proposal in all its aspects before taking a stand for or against it."

"Fundamentally the proposal to acquire is in line with the inevitable progressive trend and what must eventually come tomorrow may be profitably and wisely discussed today," Ross declared.

SEATTLE POST-INTELLIGENCER, October 12, 1934—P. 8, Col. 3 C.L.S.

G.O.P. LEADER
ASKED TO QUIT

EVERETT, Oct. 11.—DEMAND THAT JOHN N. EMERSON, RECENTLY ELECTED REPUBLICAN STATE CHAIRMAN, RESIGN THAT OFFICE WAS VOICED AT A HEAVILY ATTENDED G. O. P. RALLY HERE tonight BY PAYSON PETERSON, SECOND DISTRICT CONGRESSIONAL NOMINEE.

PETERSON CHARGED THAT EMERSON WAS REFUSING TO GIVE HIM THE SUPPORT OF THE REPUBLICAN ORGANIZATION UNLESS PETERSON WOULD SUBMIT HIS PLATFORM TO BE CENSORED BY WILLIAM BUTLER, PRESIDENT OF THE FIRST NATIONAL BANK OF EVERETT.

PETERSON SAID HE HAD MADE ELEVEN TRIPS TO SEATTLE IN AN EFFORT TO GET HIS SHARE OF A CAMPAIGN FUND BEING RAISED BY THE STATE COMMITTEE. ON HIS LAST TRIP LAST THURSDAY, HE SAID HE WAS MET BY EMERSON AND FRANK BURNS, REPUBLICAN COMMITTEEMAN, AND THAT EMERSON SAID:

" 'PAYSON PETERSON, UNLESS YOU ARE WILLING TO SUBMIT YOUR PROGRAM AND GET IT APPROVED BY MR. BUTLER, YOU WILL GET NO SUPPORT FROM US. THEY'RE THE PEOPLE THAT ARE GETTING US THE MONEY' "

PETERSON SAID BURNS FOLLOWED HIM TO THE ELEVATOR AFTERWARD AND OFFERED TO STAND GOOD FOR ANY PRINTING BILLS HE MIGHT WANT TO CONTRACT.

THE CROWD CHEERED PETERSON AS HE ADDED TO HIS RECITAL:

"I WON'T SUBMIT MY PROGRAM TO MR. BUTLER, BUT I WILL SUBMIT IT TO THE PEOPLE OF THE SECOND DISTRICT.

"I DEMAND ON BEHALF OF THE REST OF THE CANDIDATES THAT MR. EMERSON OF PULLMAN HAND IN HIS RESIGNATION TOMORROW MORNING."

PETERSON ALSO SAID HE WAS GOING TO CALL A MEETING OF THE OTHER CONGRESSIONAL CANDIDATES AND RENO OD-

LIN, SENATORIAL NOMINEE FOR SEATTLE NEXT SUNDAY TO BACK UP HIS DEMAND. He said he would ask the Republican national committee for its help. [187]

THE SEATTLE DAILY TIMES—#6, October 12, 1934—P. 1, Col. 6, H.E.R.

JUSTICE TIES
KNOT AFTER
'GIN' WEDDING
ACCUSATION

Toellner Performs Ceremony
4 Hours after Being Given
Until Today to Post $500
Bail; Couple From S. F.

—

Four hours after the sheriff's office notified him by telephone that he was charged with performing a "gin marriage," Justice of the Peace August Toellner of DUWAMISH OFFICIATED AT ANOTHER WEDDING LAST NIGHT.

AFTER THE TELEPHONE CALL, HIS ATTORNEY, ADAM BEELER, WAS GIVEN UNTIL TOMORROW MORNING TO POST $500 BAIL. THE COMPLAINT FILED BY CHIEF DEPUTY PROSECUTOR EMMETT G. LENIHAN CHARGED "SOLEMNIZING AN ILLEGAL MARRIAGE," AND THEN FOUR HOURS LATER, JUSTICE TOELLNER STOOD

BEFORE A SAN FRANCISCO COUPLE SAYING:

"I PRONOUNCE YOU MAN AND WIFE."

Filing of the charges in Justice J. William Hoar's court climaxed a four-day investigation into the dawn wedding of pretty Dorothy Leanne Hurlburt, 22-year-old stenographer, and George Bernsee, whose long prison record came to light shortly after the ceremony. Miss Hurlburt subsequently told Lenihan she was "so drunk, I don't even remember the ceremony—if there was one."

Carrying with it a fine of from $100 to $500, the complaint charged the girl was "incapable of consenting (to the marriage) for want of sufficient mental understanding."

Last night's marriage was solemnized in the Armory, where the couple sought out Justice Toellinger after going to his home and being told he was at the Armory, seeing some fellow members of the Washington National Guard. The couple, Raymond P. Hackett and Etta Andrews, both of San Francisco, was married at 9 o'clock, Toellner said.

"No body seems to have lost confidence in me because of these charges," Toellner said after the wedding.

Lenihan, who had worked tirelessly gathering bit by bit evidence in the case since the "gin wedding" Monday, said today: "I have all the evidence I need. There are three witnesses who will swear beyond a doubt that the girl in the wedding Monday was drunk."

The witnesses are Miss Hurlburt herself, who told Lenihan she remembered signing nothing and does not even recall the ceremony; Robert W. Streepy, radio entertainer, known as Arizona Joe, who told the prosecutor Miss Hurlburt "swayed and staggered" when she left an automobile in front of the justice's home, and Barnsee.

Bernsee, through his attorney, Ralph A. Horr, sent word to Lenihan yesterday afternoon that he would testify for the state if the prosecutor wanted him. Previously he had held out that the girl was "drinking," but he didn't think her so drunk she didn't know what she was doing.

Disclosure of a "gin marriage" January 9 whose principals were so intoxicated when Justice August Toellner wedded them they did not know what they were doing was made by Lenihan today.

Lenihan said W. H. Austin, 914 E. 65th St., told him his son, 23 years old, was married by Toellner January 9 to Miss Amy Jay. Toellner took $15—the same fee he received in the marriage of Bernsee and Miss Hurlburt—and filled out license affidavits in the same way he did in the Hurlburt case, Lenihan said. [188]

Lenihan checked records and found Superior Judge Roscoe R. Smith's finding of fact August 31, in annulling the marriage for Miss Jay, said:

"She was so intoxicated she had no comprehension of what she was doing, or of the nature and effect of the ceremony."

THE SEATTLE DAILY TIMES—#6, October 12, 1934—P. 3, Col. 2 H.E.R.

RAMSAY MACDONALD 68 YEARS OLD TODAY

LONDON, Friday, Oct. 12.—(AP)—PREMIER RAMSAY MACDONALD received many congratulations upon his 68TH BIRTHDAY TODAY, which he observed BY CARRYING ON HIS DUTIES AT DOWNING STREET *as usual* in the morning. He spent the afternoon with his family.

THE SEATTLE DAILY TIMES—#6, October 12, 1934—P. 4, Col. 5 H.E.R.

F. R. 'KNOCKS OFF' TO TAKE COUNTRY JAUNT

WASHINGTON, Friday, Oct. 12.—(AP)—PRESIDENT ROOSEVELT TOOK A FEW HOURS OFF YESTERDAY *to motor out into a* WARM AUTUMN COUNTRYSIDE.

FOR THE FIRST TIME IN RECENT MONTHS the chief executive pushed aside the stack of work on his desk and took A MID-WEEK RECESS. ORDINARILY HE WAITS UNTIL THE WEEK-END *and then cruises* DOWN THE POTOMAC on the yacht Sequoia.

Mr. Roosevelt left in mid-afternoon and did not return until early evening.

THE SEATTLE TIMES—#6, October 12, 1934—
P. 9, Col. 2. H.E.R.

COUNTIES LEARN TOTAL OWED IN PROPERTY TAXES

—

By Associated Press.

OLYMPIA, Friday, Oct. 12.—THE AMOUNTS THEY WILL OWE THE STATE IN PROPERTY TAXES NEXT YEAR were CERTIFIED TO COUNTIES YESTERDAY by AUDITOR CLIFF YELLE.

The state property tax bill against counties TOTALS $6,990,823, PAYABLE IN 1935. The tax for state purposes, levied this year by the State Board of Equalization for collection next year, amounted to $6,514,670, compared with $6,779,364 levied in 1933.

Of the total certified to counties by Auditor Yelle, $476,153 represents 1927 delinquent taxes. The delinquent taxes for the seventh year back, as certified last year, amounted to $464,873.

The total 1935 STATE LEVIES REQUIRED, BY FUNDS, are:

General fund, $1,797,442; common schools, $2,421,451; military, $8,986; public highway fund, $495; permanent highway, $1,309; capitol building construction, $10,592; reclamation revolving, $159; veterans' compensation and bond retirement, $1,127,082; University, $799,446; State College, $476,353; Bellingham Normal, $142,043; [189] Cheney Normal, $118,916; Ellensburg Normal, $86,172.

THE DELINQUENT AND CURRENT TAX bills for the various counties are:

Adams, $130,409; Asotin, $28,763; Benton, $70,-152; Chelan, $162,580; Clallam, $91,824; Clark, $158,496; Columbia, $60,144; Cowlitz, $154,079; Douglas, $67,232; Ferry, $21,311; Franklin, $51,678; Garfield, $37,472; Grant $74,981; Grays Harbor, $176,553; Island, $18,222; Jefferson, $41,412; King, $1,972,367; Kitsap, $80,526; Kittitas, $136,879; Klickitat, $77,595; Lewis, $168,572; Lincoln, $137,-965; Mason, $44,359; Okanogan, $59,220; Pacific $85,711; Pend Oreille, $45,034; Pierce, $571,541; San Juan, $11,424; Skagit, $155,540; Skamania, $30,742; Snohomish, $287,475; Spokane, $651,025; Stevens, $78,458; Thurston, $114,036; Wahkiakum, $15,504; Walla Walla, $185,413; WHATCOM $203-708; Whitman, $278,264; Yakima, $252,145.

SEATTLE POST-INTELLIGENCER October 15, 1934—P. 9, Col. 1, Part 2. C.L.S.

TEN HOSPITALS HERE GRANTED DOCTORS' O.K.

Various Other Institutions in State on Approved List of U. S. College of Surgeons

Ten Seattle hospitals are on the annual "ap-

proved list" announced yesterday by the American College of Surgeons.

They are Children's Orthopedic, Columbus, King County, Maynard, Providence, St. Luke's, Seattle General, Swedish, UNITED STATES MARINE AND VIRGINIA MASON.

TO OBTAIN APPROVAL BY THE AMERICAN COLLEGE OF SURGEONS, WHICH REPRESENTS MORE THAN 11,000 LEADING SURGEONS OF THE WORLD, HOSPITALS MUST COMPLY WITH CERTAIN DEFINITE REQUIREMENTS, INCLUDING PARTICULARLY THE MAINTENANCE OF ORGANIZED MEDICAL STAFFS OF ETHICAL, COMPETENT PHYSICIANS; COMPLETE MEDICAL RECORD, ADEQUATE LABORATORY AND X-RAY FACILITIES, AND A THOROUGH REVIEW AND ANALYSIS OF THE CLINICAL WORK OF THE HOSPITAL EACH MONTH.

HOSPITALS IN OTHER CITIES of the state which won places on the "approved list" are as follows:

Aberdeen — Aberdeen General Hospital, St. Joseph's Hospital.

American Lake—Veterans' Administration Hospital.

Bellingham—St. Joseph's Hospital, Saint Luke's General Hospital.

Bremerton, Puget Sound—United States Naval Hospital.

Colfax—St. Ignatius Hospital.

Ellensburg—Ellensburg General Hospital.

Everett—General Hospital of Everett, Providence Hospital.

Fort Steilacoom—Western State Hospital.

Olympia—St. Peter's Hospital.

Pasco—Our Lady of Lourdes Hospital.

Port Angeles—Port Angeles General Hospital.

Richmond Highlands—Firland Sanatorium.

Shelton—Shelton General Hospital. [190]

Spokane—Deaconess Hospital, Sacred Heart Hospital, St. Luke's Hospital, Shriners' Hospital for Crippled Children—Mobile Unit.

Tacoma—Northern Pacific Beneficial Association Hospital, Pierce County Hospital, St. Joseph's Hospital, Tacoma General Hospital, Tacoma Hospital.

Vancouver—Clark General Hospital, St. Joseph Hospital.

Walla Walla ** St. Mary's Hospital, Veteran's Administration Hospital, *Walla Walla Sanitarium and Hospital.

Wenatchee—Central Washington Deaconess Hospital, St. Anthony's Hospital.

Yakima—St. Elizabeth's Hospital.

* Provisionally approved.

SEATTLE POST-INTELLIGENCER, October 15, 1934—P. 12, Col. 7, Part 2. C.L.S.

LIGHT MATMEN HERE TONIGHT

—

Jack Reynolds Headlines Show at Civic Auditorium; Will Tackle Herb Parks

—

The little fellows of the grunt and groan sport swing into action tonight at the Civic Auditorium.

Matchmaker Abe Kubey has an impressive program set for his fall opening show, with none other than Jack Reynolds, the welterweight champion of the world, topping the program. Reynolds, who has held the 147-pound diadem for fourteen long years is scheduled to tangle WITH THE YOUTHFUL HERB PARKS OF VANCOUVER, B. C., IN THE MAIN EXHIBITION OF EIGHT TEN-MINUTE ROUNDS.

PARKS HAS YOUTH AND A WEIGHT EDGE ON HIS SIDE IN TONIGHT'S CONTEST WHILE THE CHAMPION UNDOUBTEDLY KNOWS MORE REAL TRICKS OF THE MAT GAME. REYNOLDS' TITLE WILL NOT BE AT STAKE AS THE BOUT IS AT CATCH-WEIGHTS, BUT PARKS COULD GAIN CONSIDERABLE PRESTIGE BY SCORING A WIN.

Gorilla Joe Cassu, a roughneck Italian middleweight will be making his initial Seattle start in

the semi-windup of five ten-minute rounds. He meets Gust Johnson, the Swede who won the middleweight tournament held here last season.

Steve Nenoff, the Bulgarian grappler, will be showing here for the first time as a middleweight when he meets the fast coming Bud Carney of Louisville, Ky., in the special event of five six-minutes rounds.

Carney showed here several years ago, meeting such well known boys as Joe Parelli and Iota Shima. He proved a big drawing card in the east.

Joe Reno returns from a successful invasion of Montana and other states in that territory to tangle with a highly rated newcomer, Jerry Markus of Utica, N. Y., in the preliminary of three six-minute rounds. [191]

SEATTLE POST-INTELLIGENCER, October 15, 1934—P. 12, Col. 6, Part 8. C.L.S.

B. C. AGAIN TO BOAST OF HIGH CLASS RINGMAN

—

Sonny Jones Shows Promise of Filling Shoes of Townsend, Foley This Season

—

By Dick Sharp

BRITISH COLUMBIA IN GENERAL AND VANCOUVER IN PARTICULAR HAS IN THE

PAST MANAGED TO PRODUCE SOME PRETTY HIGH CLASS RINGMEN, AND IF SONNY JONES, YOUNG CANADIAN COLORED LIGHTWEIGHT, KEEPS UP HIS PRESENT FORM, THE FANS OF THAT SECTOR WILL AGAIN BE ABLE TO BOAST OF A FIRST CLASS RINGMAN.

JIMMY MCLARNIN, BILLY TOWNSEND, VIC FOLEY, FRANK BARRIEAU AND A HOST OF LESSER LIGHTS POSSESSING CONSIDERABLE CLASS HAVE COME OUT OF THE WESTERN CANADIAN PROVINCE AND TODAY MCLARNIN REMAINS THE ONLY TOPNOTCHER. FOLEY AND MOST OF THE REST HAVE LONG SINCE RETIRED. BILLY TOWNSEND, RECENTLY RETURNED FROM AUSTRALIA, ANNOUNCED THAT HE WAS GOING TO QUIT THE RING, BUT HE IS SLATED TO BOX AGAIN SOON IN VANCOUVER.

SONNY JONES IS A YOUNGSTER COMING ALONG THAT BEARS GREAT PROMISE, AND HE WILL FACE THE ACID TEST AT THE CRYSTAL POOL TUESDAY NIGHT WHEN HE MEETS LLOYD SMITH OF LOS ANGELES IN ONE OF LONNIE AUSTIN'S TWO EIGHT-ROUND MAIN EVENTS.

Smith is a tough and tried campaigner. He has fought a flock of good boys and gave Henry Woods two hard scraps here. Jones looked exceptionally good in defeating Cecil Payne here several weeks

ago and a few more fights of that caliber will find him the talk of the Northwest.

All of the boxers on tomorrow night's ring show here wound up their training licks on the ground yesterday.

Davey Abad of Panama and Johnny Hines of Hollywood are down for the other eight-round main event melee.

Frank Wallulis and Ray Jarecki, heavyweight giants, tangle in a six-round feature mill. Two four-round bouts which set the card are Richie Fontaine vs. Jimmy Garafolo and Eddie Darcy vs. Morrie Hendicks.

Jarecki worked out here yesterday and looks like he can really fight. He certainly is a whopper of a battler, standing 6 feet 6 inches tall and scaling 240 pounds.

THE BELLINGHAM HERALD, October 15, 1934—P. 1, Col. 7 H.E.R.

CRISIS REACHED IN STOLL KIDNAPING, POLICE SAY

—

Fifth Day Expected to Bring Release or Definitely Indicate Victim Dead

—

LOUISVILLE, Ky., Oct. 14.—(AP)—The fifth

day, the most portentous for Alice Speed Stoll since she was kidnaped, brought the belief today the family has established contact with the abductor. [192]

Those in a position to know agreed that the fifth day played an important part of the $50,000 ransom note. Fears have been expressed that the kidnaper intended to kill the young society matron if at the that time he had not received the ransom and make his way to safety.

With the case at this critical stage, it was pointed out significantly that Sunday was the first day since the kidnaping last Wednesday to pass without an appeal by radio to the kidnaper. THE RANSOM MONEY HAS BEEN DISPATCHED TO NASHVILLE, APPARENTLY TO BE CALLED FOR THERE OR FORWARDED ELSEWHERE.

With all the law forces of the nation, state, county and city mased in a hunt for the wealthy young victim, the primary consideration still was for her safety—coming before making an arrest or even establishing a case.

Most promising of the clues run down by the officers today seemed to be that suggested by the reported sighting of a woman who looked like Mrs. Stoll in Warren county, half way between Louisville and Nashville. It was in this direction that Stoll drove furiously last Friday.

This section of Kentucky is honeycombed with caves. Beneath every hill and opening into every

valley, they lie in hundreds. The region is wild and sparsely settled.

Some investigators agree that Mrs. Stoll—if alive, despite being ill with a cold when she was taken away in a negligee and light coat—might be hidden in one of these little caves.

Even natives of the region have been lost for days when injured or otherwise caught in the caves, even when friends had some general idea of where to search for them. In these several hundred square miles the kidnapers could have found a place to conceal themselves for weeks.

So far as the man who is directing the search is concerned, the case apparently is exactly where it started.

"I won't claim any progress has been made," said Harold Nathan, department of justice agent.

The five futile days have yielded clues and have been marked by important developments, but no results.

Their hurried and literal compliance with the specific directions of the kidnap note gave the Stolls hope that the death they feared threatened her might be averted. Despite growing conviction among many that the captive is already dead, they passed Sunday awaiting the word for which they have appealed by newspaper and radio time and time again.

THE BELLINGHAM HERALD, October 15, 1934—P. 1, Col. 8 H.E.R.

SELF ENTOMBED MINERS SPURN ALL AID

1,200 Hungarians Prefer to Die in Black Pit Rather Than Lose Wage Strike

—

Many Already Insane

—

More than 100 Hours Spent Without Food, Drink

— [193]

PECS, Hungary, Oct. 14.—(AP)—Convinced there was "no more hope for them," a member of the Hungarian parliament emerged today from the black pit where for 106 hours *1,200* MINERS have been SELF-ENTOMBED, striking for more pay.

"I expect a terrible catastrophe in the coal mines any moment," said Janos Estergalyos, Democratic Socialist parliamentarian who descended INTO THE MINE IN AN ATTEMPT TO MEDIATE with the infuriated men.

"What I saw down there will be the most terrible remembrance of my life," he said. "THE MINERS HAVE BECOME ABSOLUTELY INSANE FROM THEIR AWFUL EXPERIENCE.

"They are determined either to commit suicide

by wrecking the pumps, or to blow up the mine. There is no more hope for them."

Until Estergalyos returned from the bottom of the thousand-foot pit, nothing had been heard from the miners since early morning when they sent up a request for 345 coffins with the words:

"We are determined to die. Forget about us . . . Goodbye to the children."

The more violent of the hunger-craved men have been tied to posts by their comrades to prevent them from killing themselves, said Estergalyos.

"The trade union no longer has any control over the men. Utterly exhausted, they are huddled down there in the heat, lying on the dirty, water-soaked bed of the mine, with huge chunks of coal for pillows.

"Some are unconscious. Nearly five days without water to drink has *prached* their throats, and they could not eat if they had food. In their agony and thirst and hunger some of them utter sounds like tormented animals."

At 2 p.m. government officials wished to send troops to the bottom of the pit to force the strikers to the surface at the point of bayonet and gun, and put an end to their threats of self-elimination unless wage demands of $3.50 a week are met.

But the fact that the mine elevator holds only sixteen men thus far had prevented the government from taking any steps, since authorities feared the famined and enraged miners might attempt to butcher the soldiers with pickaxes.

Terrible scenes were reported from the dark subterranean chasm where hunger striking miners now have endured more than 100 hours of steady self-confinement because mine owners refused to give them more than two days employment weekly and to pay more than $2.

The government hesitated to force the company owning the mine, in which Austrians and Britishers are heavily invested, to meet the miners' demands, fearing it might lead to complications with foreign governments, it would also lead, authorities feared, to similar strikes for wage increases among Hungarian miners throughout the country.

The villagers, tense and excited, interpreted this to mean that the threatened mass suicide—without precedent in capital-labor controversy—was already partly accomplished.

Representatives of the government were skeptical. They were not able, however, to determine the true state of affairs among the self entombed miners. Five guards stand at the mouth of the mine. They are armed with pickaxes, and they threaten death to any who attempt to enter.

The strange strike has been going on for more than 100 hours. During that time the men have been without food, water and lights.

Frantic wives of the men, fearing the miners would starve, sent bread and bologna to the pit today. The food was as quickly returned. With it came the note:

"We are determined to die. Forget about us. Goodbye to the children." [194]

Efforts were renewed today to negotiate with the men, but it appeared likely the attempt would not be successful. The minister of commerce sent emissaries. The sentries bared their parth with the menacing pickaxes.

An additional 3,500 miners were locked out today by the mine owners, precipitating new fears among the people. The temper of the 40,000 inhabitants is strained. Regiments of militia patrolling the city were reinforced.

There is a possibility that the government will take over the mines. What action it would take, once in control, was not made known.

THE BELLINGHAM HERALD, October 16, 1934—P. 1, Col. 2 H.E.R.

WORKER IS KILLED

—

Veteran Skagit Railroad Man Crushed Beneath Car

—

(Special to The Herald)

BURLINGTON, Oct. 15.—John Corby, about 65, veteran employe of the Great Northern railroad, WAS FATALLY INJURED here Monday afternoon when he slipped and fell beneath a flat car of a freight train which he was attempting to board.

CORBY, a construction worker, DIED TWO HOURS AFTER *he had been taken to the* BURL-

INGTON HOSPITAL. *He did not* REGAIN CONSCIOUSNESS.

HIS BODY WAS BADLY MANGLED in the accident. HIS LEFT ARM WAS AMPUTATED AND his CHEST AND BODY were BADLY CRUSHED.

The names of immediate survivors of the accident victim could not be learned.

THE BELLINGHAM HERALD, October 16, 1934—P. 7, Col. 4 H.E.R.

TWO SOCIALISTS ENTER COMMISSIONERS' RACE

—

Tuesday IS THE LAST DAY on which CANDIDATES MAY FILE FOR THE GENERAL ELECTION, NOVEMBER 6, and it ALSO IS THE LAST DAY *on which voters* IN THE COUNTY, OUTSIDE INCORPORATED CITIES and TOWNS, MAY REGISTER, County Auditor G. P. Kincaid reminded the electorate Monday.

LATE *Saturday* the SOCIALISTS FILED CANDIDATES FOR COUNTY COMMISSIONERS, running CLARENCE E. KIRKMAN, 73 LAKE WHATCOM BOULEVARD, IN THE FIRST DISTRICT, AND WILLIAM H. TYAS, ROUTE 1, EVERSON, in THE SECOND DISTRICT. *The party already has candidates in the running for the state legislature.* [195]

SEATTLE POST-INTELLIGENCER, October 17, 1934—P. 1, Col. 4 C.L.S.

TINY STORE FEELS FORCE OF STATE TAX

—

Agent Takes Register and Cash to Satisfy Occupational Levy on Grocery

—

Machine Sold, Money Kept When Merchant Can't Pay; 'All According to the Law'

—

THE STATE OF WASHINGTON HAS "CRACKED DOWN" ON THE NEW DEAL GROCERY, 6500 8TH AVE. N. W.

THE STATE, IN THE PERSON OF AN AGENT OF THE STATE TAX COMMISSION, VISITED THE LITTLE STORE AND FUEL YARD, WHERE R. L. MOORE IS ATTEMPTING TO MAKE A LIVING FOR HIMSELF AND WIFE, AND WALKED AWAY WITH MOORE'S CASH REGISTER, CONTAINING $7 IN CHANGE. THE STATE KEPT THE MONEY.

AND THEN, LAST MONDAY, THE STATE SOLD THE REGISTER AT PUBLIC AUCTION TO GLADYS SHEETS, 235 Pioneer Building, FOR $5, WHICH THE STATE ALSO POCKETED.

THE $12 THE STATE GOT BY THIS METHOD IT CREDITED TO MOORE ON THE BILL FOR $17.76, DUE ON HIS STATE OCCUPATION TAX FOR 1933, WHICH THE GROCER HAD BEEN UNABLE TO PAY. AND NOW MOORE will get a bill for the balance of $7.76, and, if he can't pay that either, the state may have to "crack down" again and confiscate some more of his property.

And it is all strictly in accordance with the law, D. H. Webster, agent in charge of the Seattle office of the tax commission, explained yesterday in defense of the occupation tax law and his procedure in collecting it.

"The law empowers us to sieze stock and fixtures in payment of tax if the tax becomes delinquent," he said.

The little store's tax was one-half per cent of the gross sales.

The New Deal Grocery, a larger institution in 1933, by now has shrunk to a tiny counter, a few dollars worth of canned goods and some dairy products. Moore and his wife look to the fuel business, which they operate "on the side", as the principal source of their income.

"Of course," Mrs. Moore said, "I suppose the tax is legal and the debt is just and we would have paid if we had been able to. We just didn't have the money to pay. We didn't expect them to come out here and take the cash register, but we can't complain because they did. A real estate friend of

ours tells us they can take the clothes off your back if they want to."

Notice of the sale of the New Deal's cash register was posted as required by law, in several "public" places, among them the lobby of the County-City Building.

"I called up Moore before the auction and suggested he come down and bid his cash register in," Webster said. "But he didn't come. Apparently he couldn't. We've been very lenient in this case. We've called him a dozen times. Besides that he got several notices from Olympia.

"We use the seizure of property as a last resort in collecting overdue taxes.

"We realize that it is difficult in these times for people to meet their taxes, so we make allowances. It is questionable, however, [196] whether we have any right to permit long delinquencies.

"This tax is in the nature of a license tax and to permit a man to operate when he doesn't pay his tax is to discriminate against those merchants who do pay their taxes."

SEATTLE POST-INTELLIGENCER, October 17, 1934—P. 1, Col. 5 C.L.S.

35-CENT HAIR CUT DUE NEXT MONDAY

—

Effective Monday, THE MINIMUM PRICE OF HAIR CUTS FOR MEN AND CHILDREN IN

SEATTLE AND KING COUNTY WILL BE 35 CENTS. THE MINIMUM PRICE FOR A SHAVE WILL BE A QUARTER.

THIS WAS ANNOUNCED YESTERDAY BY GLEN MCLEOD, CHAIRMAN OF THE KING COUNTY NRA BARBER SHOP COMMITTEE.

MANY SEATTLE BARBERS ARE CHARGING 50 CENTS FOR HAIR CUTS AND WILL CONTINUE TO DO SO, IT WAS INDICATED.

AT A MEETING MONDAY NIGHT THE BARBERS VOTED THE NEW MINIMUM PRICE, AND ALSO VOTED A FORTY-EIGHT-HOUR WEEK AND MINIMUM PAY OF $17 A WEEK FOR BARBERS.

SWING SHIFTS ARE NOT PERMITTED, BUT BARBERS WILL WORK EIGHT HOURS A DAY FOR SIX DAYS A WEEK, MCLEOD SAID.

SEATTLE POST-INTELLIGENCER, October 17, 1934—P. 3, Col. 1 C.L.S.

MRS. BARTON'S NOTE FORETOLD HER MURDER

—

Daughter Identifies Handwriting in Trial of Hendrickx as Killer of Deaf-Mute

—

Pleading piteously to be saved from the doom she

knew was approaching, Mrs. Ruby D. Barton, deaf mute, was held a "love PRISONER" DURING THE LAST DAYS BEFORE HER STRANGE SLAYING, ACCORDING TO AN ASTOUNDING STORY TOLD YESTERDAY IN THE TENSE HUSH OF A PACKED COURTROOM.

JOHANNAS MARINAS HENDRICKX, HER MIDDLE-AGED SWEETHEART AND CAPTOR, WAS ON TRIAL FOR HIS LIFE, CHARGED WITH BATTERING HER TO DEATH WITH A FLATIRON JULY 16 IN AN APARTMENT at 1911 9th Ave.

THE STORY OF THE DEAF-MUTE WOMAN, HELD PRISONER BY THE SAVAGE LOVE OF A MAN, WAS REVEALED, THE PROSECUTION CLAIMED, IN A LETTER—ONE OF THE STRANGEST DOCUMENTS EVER USED AS EVIDENCE IN A SEATTLE MURDER TRIAL—WHICH THE DEAD WOMAN WROTE TO TACOMA POLICE TWO DAYS BEFORE HER SLAYING.

THE LETTER READ:

"TO STATION POLICE:

"I HAVE BEEN FIGHT WITH JOHN HENDRICKX. I TIRED OF IT. I CAN'T STAND UP. HE WAS CHOKE ME AND KILL ME. HE DON'T LET ME GO OUT AND HE AFRAID I TELL YOU. HURRY ARREST HIM. I WAS ALMOST DIE—HE CAME HOME LAST NIGHT. LAST NIGHT HE WAS SLAP MY FACE AND ALMOST CRAZY. I HAVE WITNESS—I CAN TELL YOU WHEN YOU

PUT HIM TO JAIL. PLEASE COME HURRY. I AM NERVOUS. HE LIKE FIGHT AND HURT ME. HE WILL KILL ME TONIGHT. I AM WEAK NOW . . . MRS. HENDRICKX, 740½ COURT D." [197]

MRS. VELMA JENSEN TURNBOW OF OLYMPIA, DAUGHTER OF THE SLAIN WOMAN, IDENTIFIED THE TERRIFIED SCRAWL ON THE WRAPPING-PAPER LETTER AS THE HANDWRITING OF HER DEAD MOTHER.

"THIS IS MY MOTHER'S HANDWRITING," SHE SAID SADLY. "THERE'S NO MISTAKE ABOUT IT."

AS THE NOTE WAS READ TO THE JURY BY DEPUTY PROSECUTOR JOHN F. WALTHEW, HENDRICKX STARED IN BLANK SURPRISE, then leaned over to whisper hurriedly with his attorney, Lawrence Seltzer.

Patrolman H. C. Thornberg, Tacoma policeman, testified that he went to the Hendrickx apartment in Tacoma after the letter was received. The woman told him she was afraid for her life, he said. She had leaped from a window in a wild attempt to escape Hendrickx the night before, the officer said she told him, but she was dragged back to her supposed husband.

Thornberg advised her to consult with the prosecutor, and upon the latter's suggestion she moved to Seattle. The state maintains Hendrickx followed her here and killed her.

Parker A. Garrison, Tacoma motorcycle officer,

testified that he escorted the woman to the Tacoma bus depot as she fled that city to escape Hendrickx.

Chief Deputy Coroner W. H. Corson of King County was called to explain the woman's death. She was beaten to death with a flat-iron, he declared. He testified that the flatiron was found near her body when it was discovered July 20 in the Seattle rooming house to which she had fled.

Mrs. Turnbow testified that when Mrs. Barton and Hendrickx visited her and her husband, J. A. Turnbow, in Olympia last July, her mother was greatly frightened.

Turnbow, relating a conversation he had with Hendrickx, said the latter told him regarding Mrs. Barton:

"What she needs is a darn good beating! It'll take her down a peg!"

Mrs. Nellie Ahrold, brought here from Des Moines, Iowa, at the state's expense, testified that she had occupied the room adjoining Mrs. Barton's at 1911 9th Ave. July 16, and that through the partition she heard the crash of pots and pans, the thud of bodies against the wall, then a long-drawn sound "as though a woman were trying to scream."

For three days Mrs. Ahrold worried over the matter, and seemed to feel a dread each time she passed the door to Mrs. Barton's room, she said. Eventually she notified the proprietor of her worries, the door was opened, and Mrs. Barton's body was found, four days after the date on which the state contends she was killed.

SEATTLE POST-INTELLIGENCER, October 17, 1934—P. 11, Col. 4, Part 2. C.L.S.

PAY, OR JAIL, COURT'S EDICT

—

Life became very complicated yesterday for C. M. Huffman.

His domestic AFFAIRS WERE ALREADY DEPRESSING ENOUGH HE THOUGHT—AT A RECENT HEARING ON A NONSUPPORT CHARGE BROUGHT AGAINST HIM BY HIS PRESENT WIFE, he EXPLAINED SADLY THAT SHE "THOUGHT MORE OF THE DOG THAN SHE DID OF ME."

THEN, ON TOP OF THAT, THE FORMER WIFE, MRS. ETHEL E. HUFFMAN, HAD HIM JAILED YESTERDAY BECAUSE HE HADN'T PRODUCED THE $35 SHE NEEDED FOR SUPPORT OF THEIR ADOPTED DAUGHTER.

AT THAT POINT, W. J. MOLYNEAUX, BUSINESS AGENT, AND J. L. ELDER, [198] SECRETARY OF THE STREET RAILWAY TRAINMEN'S UNION, OF WHICH HUFFMAN IS A MEMBER, CAME TO HIS RESCUE. THEY OBTAINED HIS RELEASE AFTER PROMISING SUPERIOR JUDGE ROBERT M. JONES THAT THEY WILL SEE THAT HUFFMAN RAISES THE $35 TODAY OR ELSE RETURNS TO JAIL.

THE SEATTLE DAILY TIMES—#6, October 17, 1934—P. 5, Col. 4 H.E.R.

FROST AGAIN TOUCHES SPOTS IN SEATTLE

—

Frost touched several sections of Seattle the second night in a row last night, but Weather Bureau forecasts today were for moderate temperatures tonight and tomorrow.

Fair tonight, but becoming cloudy tomorrow, with gentle changeable winds becoming moderate southeast and south, was the forecast for Seattle.

Yesterday's highest temperature was 62 degrees; the lowest last night, 42 degrees.

Only half the normal rainfall for the first seventeen days of October has fallen this month, the Weather Bureau reported today. The total stood at .75 of an inch, with the normal accumulation 1.51 inches.

In Northern California and Southern OREGON THE SECOND SNOW OF THE SEASON WHITENED THE SIERRA NEVADAS, the Associated Press reported. A TWO-FOOT FALL IN SOME PLACES BROUGHT OUT SNOW-PLOWS. AT KLAMATH FALLS, OR., THE TEMPERATURE DROPPED TO 21 DEGREES.

SEATTLE POST-INTELLIGENCER, October 18, 1934—P. 1, Col. 2 C.L.S

SEATTLE MOTHER
AND DAUGHTER, 5,
ABDUCTED BY MAN

—

Brother Says Former
Friend Forced Pair
Into Auto

—

Two Men Seen

—

Intruder Beats Roomer in Hand-to
Hand Fight

—

Police last night swung into a city-wide search for Mrs. Millie LaPierre, twenty-seven, and her five-year-old daughter, Dorothy, following a report by her brother, Emerson Walker, 2915 Carr Place, they had been forcibly CARRIED FROM HIS HOME AFTER A TERRIFIC STRUGGLE.

WALKER TOLD POLICE THAT A FORMER ACQUAINTANCE OF HIS SISTER HAD FORCED HIS WAY INTO THE HOUSE AND MADE OFF WITH THE WOMAN AND LITTLE GIRL IN A CAR.

HE SAID THE SUPPOSED ABDUCTION OCCURRED ABOUT 5 P. M. AT A LATE HOUR LAST NIGHT, POLICE HAD FOUND NO TRACE OF THE MISSING MOTHER AND

CHILD, AND WALKER FEARED FOR THEIR SAFETY. [199]

J. L. CHRISTIANSEN, A ROOMER AT THE WALKER HOME, WAS BADLY BEATEN IN A HAND-TO-HAND FIGHT WITH THE INTRUDER, HE TOLD, WHO HIT HIM ON THE HEAD WITH A HEAVY TEA-KETTLE, KNOCKING HIM HALF SENSELESS, JUST BEFORE HE FORCED MRS. LaPIERRE AND HER DAUGHTER INTO HIS CAR.

"ALL OF US WERE AWAY FROM HOME DURING THE EARLY AFTERNOON, AND WHEN WE RETURNED WE FOUND SOMEONE HAD BROKEN IN AND HAD GONE THROUGH EVERYTHING IN MILLIE'S ROOM," WALKER SAID.

SHORTLY AFTER THAT, HE SAID, HE AND HIS WIFE AND THEIR SON, HENRY, SIX, AND LEFT AGAIN, LEAVING MRS. LaPIERRE AND HER DAUGHTER AND CHRISTENSEN THERE.

ABOUT 5 P. M., ACCORDING TO CHRISTENSEN, A CAR DREW UP IN FRONT OF THE HOUSE WITH TWO MEN IN IT. ONE OF THE MEN REMAINED IN THE CAR, WHILE THE ACQUAINTANCE OF MRS. LaPIERRE CAME INTO THE HOUSE.

"HE WAS LIKE A WILD MAN," CHRISTENSEN TOLD POLICE. "HE ROARED INTO THE KITCHEN AND ATTACKED ME. WE HAD IT HOT AND HEAVY FOR SEVERAL MINUTES, AND THEN HE GRABBED HOLD OF THE TEA KETTLE AND FLOORED ME with a blow over the head.

"The next thing I knew I saw him forcing Millie and Dorothy into the car, and away they went."

"He struck Millie once or twice in the thick of the battle before taking her out to the car."

The Walker home showed evidence of the struggle. Furniture was broken and torn clothing lay about the floor.

Walker's little son, who stood by crying and witnessed the entire battle, collected pieces that had been torn from Mrs. LaPierre's dress in the struggle, and gave them to police to aid them in their search.

Walker said his sister and her husband had been estranged for about two years.

Police were furnished a description of the car driven by the suspected abductor and prowler cars throughout the city were on the lookout for it.

SEATTLE POST-INTELLIGENCER, October 18, 1934—P. 1, Col. 6. C.L.S.

POLITICIANS
GIVEN PARTIES,
COURT TOLD

—

Whisky, Cigars and Money Also
Tendered 'Those in Power,"
Ex-Garbage Head Testifies

—

Sensational testimony that the North Seattle Garbage and Hauling Company CONTRIBUTED

TO THE CAMPAIGNS OF CITY COUNCIL CANDIDATES, FINANCED PARTIES FOR "THE PEOPLE IN POWER," AND SPENT LARGE SUMS OF MONEY IN "GOOD WILL" GIFTS DURING THE TIME THE FIRM WAS COLLECTING GARBAGE IN THE NORTH END WITHOUT A CONTRACT WITH THE CITY, WAS PRODUCED IN COURT yesterday.

THE TESTIMONY WAS DELIVERED BEFORE SUPERIOR JUDGE CHESTER A. BATCHELOR BY BERT NAVONE, PRESIDENT OF THE COMPANY, DEFENDANT IN THE SUIT WITH OTHER FORMER PARTNERS IN THE GARBAGE ENTERPRISE. A GROUP OF PARTNERS HEADED BY JOHN B. NAVONE ARE OBTAINING AN ACCOUNTING OF THE FIRM'S BUSINESS IN COURT.

REGARDING HIS EXPENDITURE OF THE PARTNERSHIP'S FUNDS FOR "GOOD WILL" GIFTS, NAVONE SAID THESE CONSISTED OFTEN OF PRESENTS OF BOTTLES OF FINE CANADIAN WHISKY, A HALF-DOZEN BOTTLES AT A TIME, TO "REPRESENTATIVES" OF NUMEROUS PERSONS "HELPING US HOLD OUR JOBS." [200]

OTHER "GOOD WILL" EXPENDITURES WERE FOR CIGARS AND "SOMETIMES FOR A PARTY," HAVONE EXPLAINED, ADDING THAT THE "GOOD WILL" EXPENDITURES WERE SEPARATE FROM THOSE ON THE

FIRM'S BOOKS AS FOR "POLITICAL" EXPENSES.

"I NEVER ATTENDED A PARTY, BUT THERE WAS A PARTY AT WHICH WERE THE PEOPLE WHO helped us out," Navone declared.

"Who were they?" asked P. O. D. Vedova, of counsel for the suing partners.

"The people who were in power at the time," Navone answered.

"We gave 'em cigars and sent 'em whisky—we gave 'em the best cigars there were, we bought them by the box."

His expenditures for "good will" were heaviest "when the campaign got hot," Navone explained.

Regarding a $500 check of the firm's drawn in 1933, Navone testified he turned the money over "to Denny Murray," and that it "was for a couple of councilmen or maybe three."

"What councilmen?" demanded Vedova.

"It was for Millikin and Carter."

Navone did not remember, he said, to whom Murray had paid the money, but said he paid it in cash to men who represented the candidates. Asked what other candidates he had paid money to, he said:

"I remember a man who represented Erickson—and Blaine. A fellow named Kuhn, and some other I cannot remember."

He explained he paid no money to "Erickson," but only to his manager, and added that he "had

been down in Erickson's campaign office." He did not remember how much he had paid, he said.

One check of August, 1930, for $200, Navone said, went to Matt Starwich's campaign for sheriff, and another check, for $100, he said, went "to pay for the radio expenses of a man elected to the city council." He did not pay the money directly to the man, but to his representative, he said. This, he testified, was in July of 1931.

The "campaign expense" items were carried on the firm's books, but the "good will" expenses were not, Navone said. He declared the firm "had paid out money every year."

The hearing will continue today. The suing partners maintain funds are still due them out of the profits of the firm, managed by Navone.

THE SEATTLE DAILY TIMES—#6, October 22, 1934—P. 1, Col. 6 H.E.R.

STORM TOLL UNESTIMATED IN TOWNS OF SOUND AREA

Deaths and Suffering Reported From Many Cities; Damage will Run Into Hundreds of Thousands

Northwest cities recovering from yesterday's

storm found that the damage toll ran into hundreds of thousands of dollars, with an accurate estimate difficult.

THE TOLL IN CITIES OUTSIDE SEATTLE WAS SUMMARIZED AS FOLLOWS:

TACOMA—MR. AND MRS. CARL CHRISTIANSEN KILLED BY FALLING POWER WIRES. WIND BLEW 83 MILES AN HOUR. THREE SUNDAY SCHOOL CHILDREN HURT WHEN CHIMNEY COLLAPSED THROUGH ROOF. Falling trees break BARRIARS AND FREE ELK IN POINT DEFIANCE PARK. KEEPERS GUARD BEAR [201] CAGES WITH RIFLES FEARING TREES MAY FREE BEASTS. HUNDREDS OF WINDOWS SMASHED, TREES UPROOTED, SMALL BUILDINGS BLOWN DOWN.

EVERETT—MR. AND MRS. JOHN DYBAL, DROWNED WHEN THEIR FISH TRAP COLLAPSED. TWO OTHER BODIES WASHED ASHORE. GENERAL PROPERTY DAMAGE.

Bellingham—R. M. Johnson of Portland killed by collapsing roof.

BREMERTON—Elmer Lee killed by TREE FALLING ON HIS AUTOMOBILE.

OLYMPIA—GIRL SEVERELY BURNED BY FALLING POWER WIRE; ONE MAN INJURED BY BLOWN-UP TREE. POWER SERVICE INTERRUPTED. HOUSE UNROOFED.

SEATTLE POST-INTELLIGENCER, October 22, 1934—P. 1, Col. 7-8. C.L.S.

EIGHT SEATTLE PERSONS AMONG STORM VICTIMS; THREE MISSING, FEARED DROWNED; GALE TAKES HEAVY TOLL OF SMALL BOATS

—

PROPERTY DAMAGE NEARS MILLION MARK; POWER AND TELEPHONE SERVICE CUT; WINDOWS BLOWN OUT IN DOWNTOWN AREA

—

Striking with hurricane force, one of the worst gales in Pacific Coast history shrieked over Seattle and the Pacific Northwest yesterday, spreading death and destruction.

The death toll of the gale, which attained velocities of seventy miles an hour, mounted last night to twelve known dead and three missing, feared drowned. Eight of the dead persons were of Seattle.

Many were injured in Seattle and all parts of the Northwest.

Five ships were in distress in Puget Sound and along the surf-battered Washington coast—one steamboat being rammed and sunk in Elliott Bay by a great ocean liner gone adrift.

Property damage was mounting toward the millions of dollars at a late hour. Walls were blown down, killing at least two; houses were unroofed, trees uprooted to block streets and highways; innumerable windows were blown out and power and telephone lines were blown down.

The trans-Pacific liner President Madison, snapping her huge hawsers like threads before the gale which smothered the Sound in driving spray, tore loose from her moorings at pier 41 and drifting sidewise, rammed and sank the steamboat Harvester, smashed into two other ships and tore a ramp from the huge pier to ENTANGLE ITSELF IN A SNARL OF WRECKAGE.

AS THE GALE ROARED UP FROM THE SOUTHWEST, CENTERING 200 MILES OFF THE SOUTHERN COAST OF WASHINGTON, ALL WESTERN WASHINGTON AND WESTERN OREGON BOWED BEFORE THE MIGHTY BLASTS OF HURRICANE FORCE AND HUGE DAMAGES WERE REPORTED.

THROUGHOUT ALL SEATTLE A TERRIFIC TOLL OF PROPERTY DAMAGE WAS TAKEN BY THE GALE. At a late hour, A SECTION OF THE NORTH END WAS WITHOUT CITY LIGHT POWER, RESIDENTS BEING UNABLE TO HAVE LIGHT OR TO PREPARE THEIR EVENING MEALS.

THE SMOKESTACK OF THE CENTRAL HEATING PLANT OF THE CHURCH OF THE IMMACULATE TOPPLED AND CRASHED THROUGH THE DOME OF THE SANCTUARY AT THE HEIGHT OF THE GALE—ONLY TEN MINUTES AFTER THE CONGREGATION HAD LEFT THE CHURCH.

THE EIGHT SEATTLE PERSONS KILLED INCLUDED QU KIN, A CHINESE, WHO WAS

CRUSHED TO DEATH IN HIS ROOM IN THE ALKI HOTEL, 204½ 5TH AVE S., WHEN A HUGE SECTION OF THE WALL OF THE BUILDING CAVED IN AND FELL THROUGH INTO THE SECOND FLOOR, BURYING HIM UNDER TONS OF BRICK AND DEBRIS.

FIVE SEATTLE FISHERMEN, DROWNED WHEN THE SEATTLE PURSE SEINER AGNES FOUNDERED UNDER SAIL IN MOUNTAINOUS SEAS OFF POINT WILSON, JUST OUTSIDE [202] OF PORT TOWNSEND. THE COAST GUARD CUTTER HAIDA, BATTLING THE HOWLING FURY OF GALE AND SEAS TO RESCUE TWO OF THE SEINER'S SEVEN MEN FROM DEATH, PROCEEDED WITH THEM TO NEAH BAY.

A MAN BELIEVED TO BE NICK SCHWARTZ, THIRTY, MARINE EDITOR OF THE SEATTLE JOURNAL OF COMMERCE, WHO WAS DROWNED IN SILVER LAKE, THIRTY MILES EAST OF BELLINGHAM, WHILE CANOING DURING A WEEK-END OUTING WITH A PARTY OF NEWSPAPERMEN.

An eighth probable Seattle death was reported when mute evidence of a nameless tragedy—a flat-bottomed rowboat with oars and fishing tackle tangled among the water inside its gunwales—drifted ashore along the waterfront near Smith Cove late yesterday out of the clouds of driven spray which at times obscured the snarling seas of Elliott Bay—and which made impossible an in-

vestigation of the tragedy at Seattle's front door.

Beside the power failure in the North End last night, Seattle's public services suffered heavily—indeed, for a time Seattle was almost cut off from communication with the outside world except by radio, for trailing wires, falling trees and whirling debris choked telephone and highway communications. Emergency crews in all parts of the Puget Sound country were laboring frantically last night to restore services to normal.

The gale, veering from southwest to south, reached a recorded velocity of sixty miles an hour at the United States weather station downtown, but government instruments at Boeing Field recorded gusts of a velocity as high as seventy miles an hour. A wind velocity of ninety-five miles an hour was recorded at Tacoma.

At a late hour the wind had subsided to forty-two miles an hour, and though no increase was expected during the night, weather bureau officers said it was unlikely to decrease much more before morning. The wind was in the southwest, with southwest to northwest shifts during the night.

The list of Pacific Northwest known dead, at a late hour last night, included, according to the Associated Press:

Chris Patow, twenty-five, of Astoria, Ore., drowned when his boat capsized while he was duck hunting.

R. M. Johnson of Portland, guest at a Bellingham hotel, who was crushed under bricks and wreckage when an edge of a roof on which he was working gave away.

Elmer Lee, thirty, Bremerton navy yard worker, crushed to death by a tree which wrecked his car near Dewatto on Hood Canal. His wife and a guest escaped with injuries.

The two other persons missing and believed drowned were John Dybdal and his wife who operated a fish trap at the mouth of the Skagit River and who were believed lost when their trap was wrecked and their house was swept into the raging seas. Attempts to reach them from shore failed as the howling gale drove rescuers back.

Phone service was reported cut off between Portland and Astoria, and calls from Seattle to Olympia and other communities to the south were being delayed for several hours, it was reported.

The gale, which at sea reached the terrific velocity of eighty miles an hour or more, drove the intercoastal freighter Floridian into the jaws of death yesterday, when she wallowed helplessly toward the rocks five miles north of the Columbia River mouth.

While the great smoking seas battered her with savage fury and her thirty-two men clung for life among the clouds of spray, a deck crew succeeded in dropping her anchors successfully. At a late hour, her SOS signals were followed by a brief message that two of her men were terribly injured, but that she could hang on and ride out the tail of the gale, later proceeded back to Portland for repairs.

As a cold dusk crept over Puget Sound under gale-torn banners of scudding cloud-wrack, a man and a woman were reported marooned [203] helplessly on a fish-trap at the south of the Skagit River near Seal Rock. They were clinging to their perilous footing while huge 'combers roared about them in clouds of spume. The new coast guard patrol boat Atalanta was plunging through the seas to their rescue.

Two men were reported lashed to piling at Boundary Bay, near the Canadian line, where a cannery company workhouse in which the two men were staying was swept away by the gale and the furious seas. Coast guardsmen were rushing to their rescue.

Nearly thirty passengers were rescued amid scenes of wild drama when the Seattle-Tacoma passenger boat Virginia V. was wrecked at Ollala during the height of the storm. Held helpless in the iron grip of the tempest, the steamboat was hurled against the Ollala wharf, smashing superstructure and hull.

A big Woods' service station at University Way and E. 52nd St. was smashed as by a tornado, levelling its buildings in a mass of wreckage and flooding the pavements with gasoline and oils as the heavy pumps snapped off like matches under the crushing weight of debris.

Trees were uprooted and flung down. In all parts of the city a huge loss of windows blown out, roofs torn off and all types of fixtures destroyed was reported.

Downtown streets were littered with debris and broken glass—part of it from street-light standards whose globes were in many cases shattered by the sheer impact of the wind.

Lake Union's crowded piers and anchorages were hurled into wild confusion as barges and log booms ripped from their moorings to drift away in sheets of spray while tugs plunged valiantly after them, at times obscured in the driving seas from the watchers on the hills.

Telephone calls literally by the hundreds poured into the Post-Intelligencer, police headquarters, police precinct stations, fire headquarters, harbor patrol officers, City Light offices, and street railway and telephone offices from citizens reporting damage.

Trees and telephone and light poles throughout the city were torn down, windows crashed and left gaping stores and office buildings howling with air currents.

Many trees were uprooted in Lincoln, Seward and other parks and in some instances broke water pipes necessitating shut-offs.

Police received at least 150 calls on electric wires and poles blown down and at least 100 calls on broken windows. Scores of chimney fires were extinguished by the fire department. Police roped off areas around many abandoned buildings which it was feared might collapse.

THE FIRE DEPARTMENT RECEIVED A TOTAL OF EIGHTY-FOUR CALLS.

POWERLINES, BARNS, CHICKEN HOUSES AND TREES WERE BLOWN DOWN BY THE GALE BETWEEN MARYSVILLE AND STANWOOD ON THE EVERETT HIGHWAY, ACCORDING TO RALPH PROPST, 110 Madison ST., WHO DROVE FROM Stanwood to Seattle YESTERDAY AFTERNOON.

THE POWER LINES WERE ACROSS THE HIGHWAY NORTH OF MARYSVILLE AND SEVERAL DETOURS WERE NECESSITATED WHILE LINE CREWS WORKED TO REPAIR THE DAMAGE, HE SAID.

A NEW DAIRY BARN JUST NORTH OF MARYSVILLE COLLAPSED, ROOFS WERE BLOWN OFF A NUMBER OF OTHER BARNS AND ROADSIDE STANDS AND SHEDS HAD TUMBLED DOWN.

WEST OF MOUNT VERNON, FIVE SEATTLE DUCK HUNTERS, AMONG THEM MORRIS EARLYWINE, OF 3821 AURORA AVE., AND B. J. BATES, of 315 N. 60TH ST., FINALLY REACHED SHORE AFTER THEY HAD BEEN TRAPPED IN THEIR HUNTING BLINDS NEAR CONWAY. EARLYWINE WAS GIVEN FIRST AID BY THE MOUNT VERNON FIRE DEPARTMENT AFTER HAVING BEEN IN THE WATER NEARLY THREE HOURS AND WAS PUT TO BED. THE PARTY HAD CLUNG TO LOGS AND STUMPS.

SMALL FIRES WERE FREQUENT IN VARIOUS CITIES, AND TWO HOUSES WERE [204] BURNED AT EVERETT. IN ADDITION

THE old ODD FELLOWS HALL THERE, NOW A ROOMING HOUSE, WAS WRECKED BY THE STORM. SEVERAL SMALL BOATS USED BY DUCK HUNTERS WERE SWAMPED, BUT their owners swam to safety or were still stranded tonight.

To the north, at Vancouver, B. C., a sixty-mile gale swept the area, driving fishing and other craft to shelter and disrupting communication lines. A small tug foundered in the Fraser River and New Westminster but no one was aboard. Many plate glass windows were shattered.

The commercial building at the Southwestern Washington fair grounds between Chehalis and Centralia was blown down by the gale, according to the Associated Press. The building was frame, about 200 feet long and 100 feet wide.

Meagre reports from Western Washington farming areas indicated that rural damage might run into large figures—for from all districts the reports were of barns blown down, houses unroofed and trees uprooted.

Over the entire area, power, light and telephone service was disrupted and some cities, including Olympia were still without power and light last night. The main Bremerton highway to the west was cut off when more than 100 trees were felled by the gale, and other cities reported a similar situation.

Nearly the entire fleet of the Bremerton Yacht Club was washed ashore on the West Bremerton

Beach, The plant of the Berg Mill Company was badly damaged. No ferry service was maintained to Seattle between 11 a. m. and 6 p. m.

In Northwestern Washington several industrial plants at Bellingham and warehouses lost their roofs.

The Pacific Highway to the south was reported kept open, although at least fifty telephone poles were torn down in the Longview downtown area.

Two families escaped injuries when trees crashed through their homes.

The fireboat Snoqualmie and two tugs of the Foss Tug and Barge Company battled in high waves on Lake Washington in an attempt to control a huge log boom which blew loose from the Taylor mill, near Renton. The raft of logs contained forty or fifty sections, and stray logs were menacing houseboats along the shore. The wind drove the boom northward into the lake.

Scores of houseboats on Lake Union and Lake Washington were reported in distress but harbor patrol boats were almost powerless to act because of the deluge of calls from every point and the difficulty of navigating the rough waters.

Several windows were blown out in the County-City Building, one large window in the Canadian Bank of Commerce was torn out, two in the Seattle Public Library, and in dozens of corner drug stores, cigar stores and restaurants panes were sent crashing to the street. Hundreds of awnings were ripped from their moorings.

The structure of the skating rink building at 55th St. and Phinney Ave., damaged by the recent amusement park fire next to Woodland Park, swayed in the wind and occasioned numerous calls from residents near by reporting that it was about to fall.

Light poles were either TORN DOWN OR SWAYED NEAR THE BREAKING POINT THROUGHOUT *the city.* PENDANT WIRES THREATENED fire and SHORT CIRCUITS. ALONG W. GREEN LAKE WAY POLES WERE BLOWN ACROSS THE STREET FROM STONE WAY TO AURORA AVE., BLOCKING TRAFFIC ALL ALONG.

THE CITY LIGHT DEPARTMENT REPORTED RECEIVING MORE THAN A HUNDRED CALLS OF LIGHT POLES BLOWN DOWN THROUGHOUT THE CITY.

STREET CAR TRAFFIC WAS TIED UP BY DISLODGED TROLLEY WIRES AT 14TH AVE. AND JOHN ST., AND AT 47TH ST. AND PHINNEY AVE.

AS THE FULL FORCE OF THE GALE HOWLED ACROSS THE LENGTH OF LAKE WASHINGTON, FERRY SERVICE WAS SUSPENDED. IN MANY PLACES THE STORM-[205] WHITENED WATERS OF THE LONG LAKE WERE COVERED WITH ACRES OF LOGS ADRIFT SMASHING LIKE BATTERING RAMS AS THEY DRIFTED TOWARD CROWDED SHORELINES.

FERRIES AND BOATS OPERATED BY THE KITSAP COUNTY TRANSPORTATION COMPANY WERE TIED UP. THE PUGET SOUND NAVIGATION COMPANY REPORTED THAT SERVICE ON THE BELLINGHAM AND EDMONDS RUNS WERE CONTINUING AS USUAL.

THREE PERSONS ESCAPED SERIOUS INJURY AT BOEING FIELD SHORTLY AFTER NOON WHEN THE GALE RIPPED A HANGAR TO PIECES, CRUSHING FOUR AIRPLANES STORED INSIDE. RAY WEBB, OWNER OF ONE OF THE PLANES, WAS WORKING ON HIS PLANE, WHILE MR. AND MRS. CAROL GRAY WERE IN THE HANGAR WITH HIM. SUDDENLY THE GALE TORE OPEN THE DOORS, FILLED THE HANGAR AND LIFTED THE ROOF BODILY FROM THE STRUCTURE. Deprived of the roof's support, the walls buckled and fell before the wind.

SERVICE OF THE UNITED AIR LINES IN AND OUT OF SEATTLE WAS DISRUPTED, DUE NOT ONLY TO WIND BUT TO GENERAL WEATHER CONDITIONS THROUGHOUT THE NORTHWEST.

THREE BOYS ESCAPED WITH THEIR LIVES WHEN FIVE SHIPBUILDING SHEDS AT THE MARINE CONSTRUCTION COMPANY PLANT, 4100 IOWA AVE., COLLAPSED BEFORE THE GALE. THE BOYS RAN INTO THE OPEN AS THE WOODEN STRUCTURES,

TOWERING SEVENTY FEET IN HEIGHT, CRASHED INTO RUIN.

THE CENTER OF THE STORM, EARLY IN THE DAY, WAS ABOUT 200 MILES OFF THE SOUTHERN WASHINGTON COAST, AND ITS WINGS WERE WREAKING DESTRUCTION IN NEARLY EVERY COMMUNITY OF Western WASHINGTON AND OREGON. HURRICANE WARNINGS WERE WHIPPING AT THE MASTHEADS OF ALL GOVERNMENT WEATHER STATIONS UP AND DOWN THE *COAT* AT 7 A. M. AT 8:30 A. M., A STRONG EASTERLY WIND WAS BLOWING IN SEATTLE, BUT BY 10:30 o'clock IT HAD VERRED TO THE SOUTH AND WEST AND WAS BLOWING INTO A GALE. THE FULL FORCE OF THE WIND WAS FELT *here* SHORTLY AFTER NOON.

WEATHER BUREAU RECORDS SHOW IT WAS THE WORST GALE IN MANY YEARS *here*—THE PREVIOUS RECENT RECORD HAVING BEEN SET DECEMBER 11, 1924, WHEN THE WIND REACHED A VELOCITY OF FIFTY-THREE MILES AN H O U R. CHRISTMAS DAY, 1929, SAW A GALE, BUT THE WIND DID NOT MOUNT MUCH MORE THAN FIFTY MILES AN HOUR IN VELOCITY, THE RECORDS DISCLOSED.

AS SEATTLE SUFFERED UNDER THE IRON FISTS OF THE GALE, SO DID OTHER WESTERN WASHINGTON COMMUNITIES.

SOUTHWESTERN WASHINGTON WAS CHOKED WITH DEBRIS, UPROOTED TREES, TORN-OFF ROOFS AND SODDEN LITTER AS A TORRENTIAL RAIN ACCOMPANIED THE GALE.

IN EVERETT, A POWER LINE WAS BLOWN DOWN, TELEPHONE LINES OUT AND FULL EXTENT OF DAMAGE TO PRIVATE PROPERTY WAS UNDETERMINED.

AT HOQUIAM, ALL TELEPHONE CALLS WERE DELAYED TWO *to* THREE HOURS.

PORT ANGELES, ALSO, REPORTED DAMAGED TELEPHONE SERVICE AND WIDESPREAD DAMAGE TO PRIVATE PROPERTY.

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THE BELLINGHAM HERALD, October 23, 1934—Page 1, Col. 3. H.E.R.

STORM DAMAGE IN CITY IS RAPIDLY REPAIRED

Orcas Island Reports Considerable Loss; Power and Telephone Companies Fix Lines

While a southeast wind vainly tried to develop a gale force Tuesday, reports of damage committed by Sunday's storm came trickling in from the San Juan islands and elsewhere. Meanwhile power and telephone companies had largely restored their services and repairs to unroofed and otherwise damaged buildings in the city and the county were proceeding.

Orcas island was hard hit by the hurricane, the DOCK AT DOE BAY *being* SWEPT AWAY AND *numerous* summer COTTAGES AT *various parts of* THE ISLAND *being* BLOWN DOWN or damaged. A cottage at Orcas Landing was unroofed.

FRIDAY HARBOR reported slight damage on San Juan island. At that port A GARAGE WAS FLATTENED and *there were dislocations of telephone and power lines* but the damage was in no case severe.

H. H. LONG, *assistant executive in* THE LOCAL FOREST SERVICE offices, SAID that forest officials were awaiting reports from Mount Baker national forest rangers.

"We have received no information about the effects of the storm on the forest," said Long, *"but we expect that the damage was plenty.* It is likely that many trees were felled across trails and roads.

FALLEN TREES AT THE SAXON CAMP OF THE BLOEDEL DONOVAN LUMBER *Mills* PREVENTED *logging* MONDAY as it was necessary to spend the day clearing trees from the railroad. Galbraith Bros. camp operated all day. The company was unable to contact its Clallam county camps Tuesday and had no information regarding damage there.

Many trees fell across state highways, but all had been cleared off Monday.

Several fell on Chuckanut Drive, probably fifteen blocked the Lake Samish road, a number fell across

the Pacific highway north of Ferndale, and a number of trees, some of them of good size, lay across the Mount Baker highway near Galena falls.

Additional waterfront damage reported Tuesday was the loss of a WAREHOUSE *at* BLAINE. *It was* OWNED BY THE MORRISON MILL COMPANY and WAS BLOWN OFF THE DOCK. The contents had been removed sometime ago.

The salvaging of logs IN BELLINGHAM BAY Monday *resulted in the recovery of five sections. Between six and eight sections remained on the beach. A low tide prevented salvaging operations* Tuesday morning. General Manager G. W. Gannon said that the work would be resumed Tuesday afternoon if it was calm enough.

The Pacific Coast Paper Mills' factory resumed operation at 8 a.m. Tuesday, its steam line, which was broken by a flying roof from the adjacent pulp factory, having been repaired.

The Pacific Telephone & Telegraph Company reported Tuesday that practically all its broken toll lines were in service again and that its repair crews would not concentrate on restoring disrupted local service, which includes part of the waterfront and the Marietta area. Alhough service will be restored partly, two weeks may pass before all permanent replacements have been effected. [207]

Secretary L. A. Jones, of the Farmers' Mutual Telephone Company, estimated that 300 poles were down and 200 telephones were still out of commission on its lines Tuesday. He estimated the damage would not exceed about $1,500.

The Puget Sound Power & Light Company said that everything would be in place by tonight. Repair crews were working in isolated places Tuesday. Nooksack Fall plant was working again. Connections Sumas were restored Monday. [208]

THE SEATTLE DAILY TIMES, #6, October 23, 1934 — P. 1, Col. 3. H.E.R.

STATE OPENS
CASE AGAINST
DONLAN SLAYER

Six men and seven women—a jury of twelve and a woman alternate—listened today TO THE STATE OUTLINE ITS CHARGE OF FIRST DEGREE MURDER AGAINST EDWARD GRIFFIS, 20-YEAR-OLD "BAD BOY," WHO ADMITTEDLY KILLED POLICE SERGT. JOHN S. DONLAN IN A BURGLARY ATTEMPT IN THE OFFICER'S QUEEN ANNE HILL HOME. GRIFFIS' ATTORNEYS ENTERED A PLEA OF INSANITY FOR HIM. THEY SAY HE CANNOT TELL RIGHT FROM WRONG.

Chief Deputy Prosecutor Emmett G. Lenihan opened the state's case against the youth today as the defendant sat in Superior Judge James T. Ronald's courtroom, with the father, who had labeled him "bad boy," close beside him.

After a day of challenging by both state and defense, the jury was finally selected just before

adjournment time last night, and Judge Ronald overruled a demurrer entered by the defense.

Arguing that the killing was committed in a second-degree burglary and therefore could not be held first-degree murder, attorneys for Griffis put up a stiff fight to have the charge reduced to second-degree murder, which does not carry the death penalty.

As they argued, Griffis seemed worried. His father, however, watched the proceedings with interest and was able to joke afterwards about his hat being stolen from the courtroom during the day.

Chosen on the jury are: Mrs. Caroline Eastwood, 4317 Morgan St.; Edward F. Watts, 9055 First Ave. N. W.; Herman F. Zuppe, 5957 Carson Ave.; Mrs. Pauline Hartman, 500 Brandon Ave.; J. Ray Hutton, 1621 N. 49th St.; Mrs. Harriett R. Moon, 5111 Keystone Pl.; Mrs. Annah W. Rogers, 5535 25th Ave. N. E.; Mrs. Kathryn M. Ginnever, 4728 21st Ave., N.E.; G. E. Crisler, 216 Mead Str.; Earl H. Senn, 2017 Stevens St.; John B. Cain, 8851 32nd Ave. S. W.; Mrs. Rose Eickoff, R. F. D. No. 3, Box 146-A, Des Moines; and as alternate juror, Mrs. Viola Coates, 436 Mill St., Renton.

The youth sat listless, his chin lowered on his chest, as a jury was selected for the trial.

Lenihan and an assistant, John MacGillivray, examined prospective jurors for the state. Two women who indicated they would be unable to vote the

death penalty for Griffis were excused. Their dismissal was a grim reminder to the youth that the state will ask his life for the police sergeant's.

Griffis' attorneys, Matthew I. Longfellow and John L. Fitzpatrick, brought a long list of witnesses they intend to call in an exacting probe into the youth's past in building their defense.

Sergeant Donlan was shot to death the evening of May 20, in his home at 346 Kinnear Pl. His slayer fired three shots—one into the fireplace of the policeman's living room, one into Donlan's arm and a third into the sergeant's heart.

A barrage of printed circulars was laid down by Seattle police, when Griffis was suspected soon after the crime by evidence detectives massed at the Donlan home and at several Queen Anne homes which had been entered by a burglar.

Griffis was arrested at Los Angeles August 8, as a robbery suspect, identified from the circulars and confessed the murder. He repudiated the confession to newspaper men, but again confessed when shown a photograph of the Donlan family.

Griffis' career of crime started early, police records show, and seemed halted in 1930 when he was sentenced to the Preston, Calif., reformatory, convicted on twenty-four counts of burglary. But he escaped February 28 of the next year. Arrested in Portland, Ore., July 9, 1931, on four counts of burglary, he was returned to continue his sentence at Preston. [209]

Detectives say he has confessed several Seattle burglaries committed before the Donlan murder.

THE SEATTLE DAILY TIMES, #6, October 23, 1934 — P. 1, Col. 4. H.E.R.

WEBER, U. OF W.
ATHLETE, DIES OF
CRASH INJURIES

JOSEPH WEBER, JR., UNIVERSITY OF WASHINGTON BASEBALL CAPTAIN IN 1933 AND A MEMBER OF THE UNIVERSITY'S COAST CHAMPIONSHIP BASKETBALL TEAM LAST WINTER, DIED AT VIRGINIA MASON HOSPITAL EARLY TODAY OF COMPLICATIONS OF A NOSE INJURY SUFFERED IN AN AUTOMOBILE ACCIDENT OCTOBER 6.

WEBER, WHO WAS 23 YEARS OLD, LIVED AT 1770 26TH AVE. N. HIS FATHER IS AN EXECUTIVE OF A STEVEDORING FIRM.

WEBER'S DEATH, WITH THAT LAST NIGHT OF OLE C. JOHNSON, 45 YEARS OLD, APPARENT HIT-RUN AUTOMOBILE VICTIM RAISED THE COUNTY'S 1934 TRAFFIC TOLL TO 128 DEAD.

The accident in which Weber was injured occurred at 24th Avenue North and East Lynn Street. Chief Deputy Coroner W. H. Corson said Weber was riding in an automobile driven by Jack Hanover, 4803 Aurora Ave., his teammate on University basketball and baseball teams. The automobile skidded into a curb and Weber bumped his nose on the windshield.

Weber was taken to Virginia Mason Hospital

and remained there until his death. Hanover was not hurt. His mother, Mrs. A. J. Hanover, said she believes the youths were driving to the Weber home at the time.

Funeral services are in charge of Joseph R. Manning & Sons.

Weber was born here and was graduated from St. Martin's High School in 1929. He played varsity baseball and basketball at the University in 1932-33-34 and was a member of Phi Gamma Delta Fraternity. He had finished all but one quarter of his University course.

Surviving are his parents; three brothers, Maurice, Gerald and Carl, and two sisters, Miss Rita Weber and Mrs. Walter Scudder.

Johnson, the other traffic victim, died at Harborview County Hospital without regaining consciousness to tell what happened to him. He was found lying along East Marginal Way a mile south of the city early yesterday, apparently injured by a hit-run automobile. He was 45 years old and lived at 84 Union St. [210]

THE SEATTLE DAILY TIMES — #6, October 24, 1934—P. 1, Col. 6. H.E.R.

130TH TRAFFIC
DEATH OCCURS IN
HEAD-ON CRASH

In a head-on truck collision in the main street of Snoqualmie last night, Hyman Goldberg, 53 years OLD, 2011 E. JAMES ST., WAS INJURED FA-

TALLY, AND HIS COMPANION, THEODORE KESSLEFF, 47, OF 707 33RD AVE., SUFFERED SERIOUS INJURIES.

GOLDBERG WAS THE COUNTY'S 130TH TRAFFIC DEATH VICTIM THIS YEAR. GEORGE M. VAAS, 72, OF 536 18TH AVE., HAD DIED EARLIER IN THE EVENING AT HARBORVIEW COUNTY HOSPITAL OF INJURIES SUFFERED YESTERDAY MORNING AT BROADWAY AND EAST CHERRY STREET. MISS ETHEL MCNEIL, 2909 E. SPRING ST., THE DRIVER, REPORTED VAAS STEPPED FROM BEHIND ONE AUTOMOBILE into the path of her own.

The 1934 death toll is far ahead of any year in the county's history, Chief Deputy Coroner W. H. Carson said. There have been between fifteen and twenty more traffic deaths than at this time last year—and last year's total of 144 was only one below the all-time record, set in 1931.

Dr. Corson said Goldberg's small vegetable truck collided with a heavy truck of the Sunset Highway Motor Freight Company, driven by William M. Sherman, 7118 Seward Park Ave. Sherman was unhurt and his truck damaged so slightly that he was able to continue his trip to Yakima.

Goldberg died enroute here after emergency treatment at the Snoqualmie Hospital. Hessleff suffered arm and leg fractures and was reported in "fair" condition at Harborview.

SEATTLE POST-INTELLIGENCER, October 25, 1934—P. 1, Col. 2 C.L.S.

I'M READY TO PLEAD GUILTY RIGHT NOW, SAYS EDDIE GRIFFIS

Murder Suspect in Revolt Against Lawyers

State Rests

Youth Greets Grandmother With Kiss on Lips

By R. B. Bermann

"Why all of this fuss? I'm ready to plead guilty right now."

That was twenty-year-old Eddie Griffis' remark yesterday AFTER CHIEF DEPUTY PROSECUTOR EMMETT G. LENIHAN HAD RESTED HIS CASE AGAINST THE YOUTHFUL GUNMAN, ON TRIAL FOR THE MURDER LAST MAY OF POLICE SERGEANT JOHN S. DONLAN.

THE ADMITTED SLAYER WAS IN OPEN REVOLT AGAINST HIS OWN LAWYERS, M. L. LONGFELLOW AND JOHN L. FITZPATRICK, AND SHOWED THAT HE WAS COMPLETELY OUT OF SYMPATHY WITH THE PLEA THAT THEY HAVE INTERPOSED ON HIS BEHALF, OF NOT GUILTY BY REA-

SON OF mental irresponsibility. [211] While Captain of Detectives Ernest Yoris and Lieut M. C. Pease were being cross-examined by Fitzpatrick about the confession they obtained from him last August, young Griffis frequently punctuated the questions with soft but audible expressions of his displeasure.

"Why don't you shut up?" was one of his observations.

"Keep quiet!" and "Can't you keep quiet?" were others.

And when Fitzpatrick drew from Yoris the statement that the young killer had told him he was not "nuts," Griffis turned toward the lawyer and breathed:

"But you're nuts!"

Solemn though the occasion was, the young slayer's sotto voce expressions provoked the crowded courtroom to laughter so frequently that Superior Judge J. T. Ronald was compelled to threaten to have anyone who displayed mirth again ejected for the balance of the trial.

Griffis' conduct was not promoted by any light-hearted disregard of the seriousness of his predicament. His mien was gloomy as he left the courtroom after adjournment for the day, and he asked a reporter.

"How does it look for me?"

Without waiting for a reply, he supplied his own answer.

"Pretty bad, I guess."

He was cheered up, however when he was accosted in the hall by his aged grandmother, Mrs. Mary M. Martin, who came from Vancouver, Wash., to Seattle to try to assist him. It was the first time he had seen her since he was three.

"Gee, I'm glad to see you," he said with a grin after she had kissed him on the lips. "I never saw you before—he hid all my relatives out on me"

He pointed his head toward his father, Peter F. Griffis, as he made the last remark.

"Oh, yes, you've seen me before," Mrs. Martin assured him smilingly. "You just don't remember. But I'd have known you anywhere—you have your dead mother's eyes."

"Have I?" asked the boy, and looked pleased.

Young Griffis' animosity toward his father was brought out again in the testimony of Captain Yoris, who said that on the way back from Los Angeles his prisoner told him that he didn't want to see either his parent or any lawyers.

Fitzpatrick brought out the fact that he and Longfellow, with the father, had insisted on seeing the youth, and that at this interview he had asked the slayer if he didn't have headaches or if his eyes didn't swim. Yoris said Griffis had replied in the negative, adding:

"I'm not nuts, if that's what you mean."

It was at this juncture that the defendant announced his belief that the attorney was "nuts".

What seemed to arouse young Griffis' ire most

was Fitzpatrick's implication that the detectives had bought candy for him to induce him to confess.

"Nuts! he exclaimed, seeming scarcely able to remain in his chair, when the lawyer put such a question to Pease. But that didn't keep him from appearing gratified when, a few minutes later, Pease promised to send some more candy to him in jail.

The youth seemed fairly beside himself when Fitzpatrick tried without success to get Pease to testify that he had boasted he was " a greater man than Dillinger.".

Both Yoris and Pease testified to the two confessions which Griffis had signed, and which were introduced in evidence. They declared that though he had been willing from the first to admit numerout robberies, it was only after he was shown photographs of his victim's body that he confessed the killing. [212]

SEATTLE POST-INTELLIGENCER, October 25, 1934—Page 2, Col. 3 C.L.S.

MAYOR HIT IN LOTTERY FIGHT

Charles and counter-charges flew yesterday at a hearing on Attorney PAUL CARRIGAN'S SUIT TO COMPEL MAYOR CHARLES L. SMITH AND THE POLICE DEPARTMENT TO CLOSE SEATTLE'S LOTTERIES.

"THE LOTTERIES COULD NOT EXIST WITHOUT THE acquiescence of the MAYOR . . . AND EVERY CHILD IN THE CITY KNOWS IT," *Carrigan* DECLARED.

LATER, WHEN HE TOLD OF HAVING WRITTEN THE MAYOR A LETTER PROTESTING THAT HIS FILIPINO CLIENTS WERE LOSING THEIR MONEY IN THE LOTTERIES, CARRIGAN ADDED:

"AND OUR MAYOR SENT ME A CHILDISHLY FACETIOUS REPLY ON THE TRIBULATIONS OF FILIPINOS."

ASSISTANT CORPORATION COUNSEL JOHN A. HOMER, REPRESENTING MAYOR SMITH, CHIEF OF POLICE GEORGE H. COMSTOCK AND SERGEANT A. L. CHAFFEE OF THE MORALS SQUAD, CHARGED THAT THE WHOLE SUIT WAS "INSPIRED BY POLITICS."

He told Superior Judge Kazis Kay that the suit demands the impossible—police can only arrest lottery operators and cannot abate the lotteries themselves without court action, he pointed out. Beside, he said, Carrigan had no special right to bring a suit to compel officials to action.

Carrigan, however, said he had a special right—his Filipino clients he said, lost in the lotteries the money they owed him for fees.

"In one murder case," he declared, "the existence of lotteries cost me $1,000 in fees due me."

THE BELLINGHAM HERALD, October 25, 1934—Page 1, Col. 2. C.L.S.

BANK LENDING DEPENDS ON BUSINESS

Financial Leaders Willing to Open Money Flow When Conditions Justify

Reply Given President

Roosevelt's Failure to Mention Budget Disappoints

WASHINGTON, Oct. 25.—(AP)—A double barrelled reply to President Roosevelt's challenge to *American bankers came today at the closing sessions of their convention in the form of resolutions* DEMANDING A BALANCED BUDGET AND A REPORT THAT BANK LENDING *was dependent* UPON BUSINESS.

At the same time, the Bankers association adopted a RESOLUTION *pledging* COOPERATION WITH THE GOVERNMENT. The President had called upon them to demonstrate their confidence in the American people. His speech evoked both favorable and adverse criticism.

Just before adjournment, the economic policy commission of the association presented conclusions that "American business will again become a good customer of American banking when the prospects for business profits promise to justify the risks of [213] borrowing. The initiative must be that of

the business man. It cannot be that of the banker."

The concluding session of the convention saw the *bankers rise to give a* VOTE OF APPRECIATION FOR *a* SPEECH BY DAVID LAWRENCE, a WASHINGTON NEWSPAPERMAN, IN WHICH HE ASSAILED THE POLICIES OF THE ROOSEVELT ADMINISTRATION.

Earlier Francis Marion Law, the retiring president, had said the cross section view of the association pointed the way to "further understanding and co-operative effort."

The report of the economic policy commission said:

"The developments of this period have conclusively demonstrated that credit availability can facilitate enterprise but can not create it.

"Unless and until productive business expansion takes place on a large scale, the federal government must remain the most important customer of the banks.

"The policy which should guide bankers in their operations during this period should be that of fostering and assisting business expansion.

"The criteria for credit expansion should continue to be the time tested standards of community service, responsibility of the borrower and security of the loan.

"This is a time when good banking must perforce be courageous banking, and likewise it is the time when courageous banking must be vigilantly resolute to be good banking."

The Economic Policy commission is headed by Leonard P. Ayres, vice-president of the Cleveland Trust Company, and widely known as an economic writer. The commission's report is supposed to give a cross section of the American bankers' viewpoint.

The co-operative resolution said reports indicated encouraging signs "that business is now beginning to seek a greater volume of bank credit, which has been and is available for its own use."

"It is to be hoped that a steadily increasing degree industry and trade will avail themselves of the comprehensive banking facilities which both government authorities and bankers are recommending that they utilize," it added.

The demand for a balanced budget said the association recognized that emergency expenditures were at times called for in the interests of human welfare.

"Understanding statesmen," the resolution said, "meets such emergencies as they arise, but at the same time make it clear that expenses can not be allowed to exceed income indefinitely."

Some high officials of the association said the bankers had hoped the President would comment on the budget in his speech last night.

The resolution said "this sound principle was recognized by the President of the United States in the comprehensive message which he sent to Congress on the fourth of last January outlining the future financial policy of the administration and

setting a time schedule for expenditurs to be made in the interest of relief and recovery.

Out of President Roosevelt's address to the American Bankers' Association there arose today clear indications that the administration hopes for international harmony on a policy of arriving at price stabilization "as quickly as possible."

In a speech in which he challenged the banking fraternity last night to speed the flow of credit, the President included this paragraph: [214]

"With respect to international relationships, I have been glad to note the growing appreciation in other nations of the desirability of arriving, as quickly as possible, at a point of steadiness of prices and values. This objective of a greater steadiness we have constantly kept before us as our national policy."

Special significance was attached to this because sources close to the administration expressed the belief it was one of three salient points in the speech. They did not elaborate on it, however.

The remarks on price stabilization are not a pledge for currency stabilization which many bankers desire. Many of the 4,000 delegates who crowded Constitution hall to listen regarding the speech as leading the door open to whatever monetary strategy may be deemed advisable to attain the desired price level and then keep it stable.

It was recalled that the President has expressed a wish for a dollar that would remain steady in purchasing power over a long period—in other words, a managed dollar.

Another point stressed in administration quarters today was the President's remark that bankers are not equal to nor independent of the government.

He said "The old fallacious notion of the bankers on the one side and the government on the other as more or less equal and independent units has passed away."

"Government," he said, "by the necessity of things must be the leader, must be the judge of the conflicting interests of all groups in the community, including bankers. The government is the outward expression of the common life of all citizens."

The other point stressed as salient was his challenge to the banks to "resume their responsibility" and expand the flow of credit.

"Just as it is to be expected," he said, "that the banks will resume their responsibility and take up the burden that the government has assumed through its credit agencies, so I assume and expect that private business generally will be financed by the great credit resources which the present liquidity of banks makes possible."

"Tonight I ask the bankers of the country to renew their confidence in the people of this country," he said, "I hope you will take me at my word."

The bankers' contention is that they have been eager to lend but that borrowers have been reluctant.

The President promised that government lending and spending would taper off just as soon as banks

and business took over the job. He looked forward to reviving business activity and a future lightening of the relief load.

It is now time, he declared, "for an alliance of all forces intent upon the business of recovery" including "business and banking, agriculture and industry and labor and capital."

"What an American team that is!" he exclaimed.

Francis Marion Law, retiring president of the Bankers' Association, which concludes its sixtieth convention today, said of the President's speech:

"Out of the suggestions made by the President and Mr. Jackson Reynolds (who also spoke), there can and should be worked out a sound program of far-reaching co-operation between the government and the banks and the other groups named by the President, the kind of program that would be a real contribution to the cause of recovery." [215]

Other bankers received the speech with comments that ranged from "excellent" to "disappointing."

One high authority said privately before the speech that bankers hoped for assurances as to budget balancing and private profits.

The President said nothing about the budget.

But he did enunciate a belief in private profit the words that "wealth should come as the reward of hard labor of mind and hand. That is what we call the profit system"

The speech was not critical in vein and its tone was friendly. Some delegates had previously spoken

a hope that the President would "pat us on the head." This, the President did not do, but neither did he attack, and members of the association were quick to recall praise and pledges of other government officials as indicating the administration's attitude.

Reynolds, president of the First National Bank of New York, preceded the chief executive with a speech in which he suggested that the banking fraternity "has endured enough mass punishment" to be in a "chastened and understanding mood."

He raised the question whether a definite and irrevocable pledge to stabilize the dollar for all time would not lend strength to the inflationists.

He suggested that the bankers let their "secret selves" answer whether they would have the President "at one stroke both tie our hands vis-a-vis the curriencies of Europe and the Orient and risk consolidating into one irresistable program the inflationary demands here, by making a statement today that the very definite stabilization of the dollar effected last January and since maintained should stand for all time under all circumstances."

"We desire," Law said, "to assure the President that the banks have full confidence in the people. The bankers liked the clear statement of the President that labor of mind and hand were entitled to fair profits for this labor.

"We have felt that emergency credit would be succeeded by private credit when the emergency was passed, and we welcomed the President's frank

avowal that this was true and that traditional private credit would again resume its full function in fostering American progress.

"The banks have always been in alliance with industry, labor, business and agriculture, and the President's call for a closer alliance will meet our full response.

Referring to the speech of Jackson Reynolds, president of the First National Bank of New York, who preceded the President, Law said:

"The address of Mr. Reynolds and the message of the President was complimentary. Mr. Reynolds gave assurance of the bankers desire to cooperate fully with the government in every sound recovery effort."

"In such an atmosphere the banks can and will do their full duty." [216]

THE SEATTLE DAILY TIMES, #7 November 3, 1934—P. 1, Col. 8 H.E.R.

SLIGHT EARTH TREMORS
ROCK SEATTLE HOMES

EARTHQUAKE SHOCKS WERE FELT IN SEATTLE AND PARTS OF WESTERN WASHINGTON AT 6:52 O'CLOCK THIS MORNING, AFTER A NIGHT OF HOWLING GALES, THUNDER AND LIGHTNING, HAIL AND A DOWNPOUR OF RAIN.

NO DAMAGE WAS REPORTED FROM THE EARTH TREMORS, BUT THEY WERE GEN-

ERALLY FELT Along the eastern shores of Puget Sound and the western slope of the Cascade Mountains. Tacoma reported the earthquake, and shocks were reported felt in the areas near Skykomish, Sedro-Woolley, Baker River, Mount Vernon, Bellingham and Concrete. The tremblors rattled windows and dishes.

THE University of Washington seismograph RECORDED THE EARTHQUAKE FOR TWO MINUTES, STARTING AT 6:52:30 O'CLOCK.

"The shocks were very distinct," Walter M. Chappell, in charge of the instrument said. "They came from a north or south direction and were less than 100 miles away, blending into a continuous waving line written by the seismograph needle."

G. E. Goodspeed, associate professor of geology at the University of Washington ascribed the quake to the "Mount Si fault" near North Bend. The fault runs in a north-and-south direction, along the juncture of old Mount Si rock with newer Cascade Range rock, Professor Goodspeed said.

"The same fault caused earthquakes during July of 1932," said Professor Goodspeed.

The shocks brought a flood of calls to The Times switchboard from Queen Anne Hill, East Madison and business district residents, but their effect was confined, apparently, to jaring windows and dishes and pictures on walls.

Last evening's gale whistled around corners to catch homeward-bound business district crowds by surprise. The official corrected wind velocity reached

thirty-six miles an hour at 6:05 o'clock, Meteorologist Lawrence C. Fisher reported. At 6:15 a forty-eight mile gust was recorded at Boeing Field station.

The high winds preceded a hail-and-thunderstorm that struck about 10 o'clock. No damage from lightning was reported. A full inch of rain has fallen in twenty-four hours this morning, Mr. Fisher said.

Some damage to telephone and electric light wires was done in Seattle and vicinity by the winds, but it was trifling compared with the recent gales that wrecked $1,000,000 damage in the Northwest.

A small slide resulted from the downpour on Yesler Hill, north of Yesler Way and east of the Public Safety Building.

Cascade pass highways were open today, but one-way traffic was necessary at several points because of slides.

Paradise, in Rainier Park, had a temperature 1 degree above freezing this morning. Heavy snow was falling and eighteen inches were on the ground at 7:30 o'clock.

Southeast storm warnings were lowered today, but small craft warnings were up at all Washington and Oregon display stations, including Puget Sound and the Straight of Juan de Fuca.

Snow over mountain ranges, strong south and southwest winds and unsettled, rainy weather, was the Weather Bureau forecast for tonight and tomorrow. Seattle was to have moderate temperatures.

The storm center in the Gulf of Alaska still sent bad weather to the entire Pacific Northwest today, the Weather Bureau said. [217]

SEATTLE POST INTELLIGENCER, November 5, 1934, Page 1, Col. 6. C.L.S.

SCHWELLENBACH AND ODLIN EACH PREDICT VICTORY

CITE FIGURES

DILL TO SPEAK OVER RADIO; ABSENTEE VOTE LARGE

(By E. B. Fussell)

Conflicting CLAIMS OF LATE GAINS MARKED THE SENATORIAL CAMPAIGN YESTERDAY, AS Republicans and DEMOCRATS ORGANIZED THEIR FORCES FOR TUESDAY'S ELECTION.

Republicans cited late FIGURES FROM THEIR STATE-WIDE POLL, DECLARING that THE LAST DAY'S RETURNS SHOWED Reno Odlin leading Lewis B. SCHWELLENBACH In King County and the state at large

Republicans claims that a large number of well known Democrats were not supporting Schwellenbach were denied by Schwellenbach's backers. *His* HEADQUARTERS ANNOUNCED THAT SENATOR C. C. DILL, WHO HAS BEEN QUIESCENT IN THE CAMPAIGN, OTHER THAN PRESIDING AT A SCHWELLENBACH- BUR-

TON K. WHEELER MEETING IN SPOKANE, WOULD SPEAK TONIGHT ON A RADIO HOOKUP.

TELEGRAMS ASSURING HIM OF THEIR SUPPORT WERE RECEIVED BY SCHWELLENBACH YESTERDAY FROM PROMINENT DEMOCRATS OF THE STATE, INCLUDING F. J. SCHAAF, LLOYD J. BLACK, A. E. JUDD, MRS. WILLIAM MATTHEWS, EDWARD W. ROBERTSON, ELSIE GARDNER PICKING, H. H. HENNEFORD, AND OLE H. OLSON.

SCHWELLENBACH DID NO CAMPAIGNING YESTERDAY, BUT SENATOR JOHN E. ERICKSON, OF MONTANA ARRIVED BY WAY OF REINFORCEMENT, TO BE WELCOMED BY A SCANDINAVIAN-AMERICAN MEETING AT MASONIC TEMPLE.

Odlin spoke to a Slavic meeting at Polish Hall, made a radio address and is to deliver his final messages of the campaign over the air channels today. He will also visit the Old Soldiers' Home at Retsil today. He will go to Olympia tomorrow to vote and remain there to receive the returns.

The Democratic campaign is to be brought to its climax at Eagles Auditorium tonight in a meeting in which Schwellenbach and Senator Homer T. Bone are featured.

With a rally at Jason Lee Junior High School auditorium, Tacoma, William J. Wilkins', Cincinnatus candidate for United States Senator, will wind up his campaign tonight.

"We have made the voters conscious of the fact,"

said Wilkins, "that the great and real issue before our American democracy today is simply "common honesty—intellectual as well as material—in government."

"We are convinced that in the next two years a titanic struggle will be waged in our state between the forces of bad government and good government. Cincinnatus is ready, will continue the fight —and will win."

"We has compromised with no one, with no issue, with no other political group and we do not intend to do so in future."

Unusually heavy absentee voting is to be concluded today, with a possibility that close to 2,000 Seattle and King County citizens will have marked their ballots in advance of the election. The absentee ballots are sealed and will not be opened until next Monday, with a possibility that close contests, state and county, may hinge upon their count.

The lineralized absentee law, in effect at the primary election for the first time, permits citizens unable to visit the polls [218] through physical incapacity to cast ballots as well as those actually away from their precincts.

Charges of attempts to gain advantage at the polls Tuesday were being hurled by both sides in the county campaign. Democrats, who have been sounding the "Vote 'er straight" slogan, charged that instructions to election officials were ambiguous and led some to believe that the party levers would be locked against "straight ticket" voting.

"That is ridiculous," said County Auditor George A. Grant. "The party levers will operate for any

party except the Federalist Party, which has only two candidates in different legislative districts."

George E. Flood, Republican county chairman, charged that Democratic election officials were planning to "rush" voters to encourage straight-ticket voting.

Flood and Grant pointed out that the law allows each voter two minutes at the voting machine.

SEATTLE POST INTELLIGENCER, November 5, 1934. Page 2, Col. 7 C.L.S.

TODAY'S NEWS SUMMARY
(Monday, November 5, 1934)

LOCAL

SHERIFF D. L. BLANKENSHIP OF KITSAP COUNTY AND THREE OTHERS KILLED IN AUTOMOBILE CRASHES. (Page 1, Col. 2, Part 1.)

Republicans and DEMOCRATS both CLAIM HEAVY GAINS ON EVE OF tomorrow's ELECTION. (Page 1, Col. 6, Part 1)

New road projects for 1935 listed by county engineer. (Page 3, Col. 1, Part 1.)

William H. Sears, Republican nominee for sheriff, promises trained men for sheriff's office. (Page 6, Col. 1, Part 1.)

SEATTLE GIRL RETURNS FROM EIGHTEEN MONTHS' EUROPEAN TOUR. (Page 3, Col. 6, Part 1.)

SEATTLE SCHOOLS TO BE OPEN FOR IN-

SPECTION IN OBSERVANCE OF AMERICAN EDUCATIONAL WEEK. (Page 1, Col. 2, Part 2).

MAN ENDS LIFE WITH SHOT GUN; TWO OTHER SEATTLE SUICIDE ATTEMPTS REPORTED. (Page 1, Col. 6, Part 2.)

GIRL CRITICALLY INJURED IN THIRTY-FOOT FALL FROM W. SPOKANE ST. STREET CAR TRESTLE. (Page 3, Col. 8, Part 1.)

FOREIGN

ALLIANCE OF TURKEY, YUGOSLAVIA AND RUMANIA REPORTED. (Page 3, Col. 1, Part 1.)

POSTPONEMENT OF THE SARR PLEBISCITE LIKELY, FRANCE INFORMS POLAND. (Page 1, Col. 3, Part 1.)

JAPAN SPEEDING WAR PREPARATIONS IN MANCHOUKUO, SAYS FRENCH PAPER. (Page 4, Col. 1, Part 1.)

NATIONAL

SIR CHARLES KINGSFORD-SMITH COMPLETES AUSTRALIA TO SAN FRANCISCO FLIGHT. (Page 1, Col. 5, Part 1.)

BOTH SIDES CLAIM ADVANTAGE ON EVE OF NATIONAL ELECTIONS TUESDAY. (Page 1, Col. 6, Part 1.)

Cabinet Rift develops over "premier" powers given Richberg. (Page 2, Col. 6, Part 1.)

ALIEN SMUGGLING 'SLAVE" RING EXPOSED IN NEW YORK (Page 5, Col. 1, Part 1.)

SEATTLE POST INTELLIGENCER, November 5, 1934. Page 3, Col. 4. C.L.S.

SOLON URGES CONTINUATION OF NEW DEAL

Senator Erickson of Montana, and Bone Ask Election of Schwellenbach Tomorrow.

Seattle Democrats were urged yesterday by United States Senator John T. Erickson of Montana to "assure the CONTINUATION OF THE NEW DEAL" BY SENDING A DEMOCRAT CONTINGENT TO CONGRESS AT TOMORROW'S ELECTION.

SENATOR ERICKSON SPOKE AT A MASS MEETING AT MASONIC TEMPLE SPONSORED BY THE SCANDINAVIAN-AMERICAN DEMOCRATIC CLUB.

AFTER TRACING ACHIEVEMENTS OF THE DEMOCRATIC ADMINISTRATION, SENATOR ERICKSON REFERRED TO THE PRESIDENT'S PROGRAM OF OLD AGE PENSIONS, UNEMPLOYMENT INSURANCE AND OTHER SOCIAL AND ECONOMIC REFORMS WHICH WILL PROBABLY FACE THE NEXT CONGRESS.

"I HAVE REFERRED TO THESE MATTERS IN ORDER TO JUSTIFY A REQUEST FROM THE VOTERS OF THE STATE TO SUPPORT A CONGRESSIONAL DELEGATION THAT IS SYMPATHETIC WITH THE OBJECTIVES OF THE NEW DEAL AND

WHO ARE IN HARMONY WITH THE GENERAL PROGRAM OF RECOVERY AS ADVOCATED AND PROPOSED BY OUR GREAT PRESIDENT," HE SAID.

UNITED STATES SENATOR HOMER T. BONE SPOKE ON THE SAME PLATFORM IN ADVOCACY OF L. B. SCHWELLENBACH'S CANDIDACY FOR THE UNITED STATES SENATE.

"I WANT YOU TO SEND HIM BACK TO THE SENATE," HE SAID. "HE'LL STAND HITCHED ON A PROGRAM FOR THE UNDERDOG."

MONRAD WALLGREN, CONGRESSMAN FROM EVERETT, AND DEMOCRATIC CANDIDATES FOR COUNTY OFFICES ALSO SPOKE BRIEFLY.

SEATTLE POST INTELLIGENCER, Page 13, Col. 8, November 5, 1934. C.L.S.

SHOTGUN SUICIDE IN HOTEL ROOM; 2 OTHER ATTEMPTS

MYSTERY

"DRINKING"

WOMAN CRITICAL

A MAN TOOK HIS LIFE IN SEATTLE YESTERDAY, WHILE TWO OTHER REPORTS OF ATTEMPTED SUICIDE WERE RECEIVED BY POLICE.

LYING MORTALLY WOUNDED ON THE FLOOR OF HIS DOWNTOWN HOTEL ROOM, R. I. MOORE, THIRTY-NINE, WAS FOUND DYING IN THE EARLY HOURS YESTERDAY BY A HORRIFIED CLERK.

A SMALL-GAUGE SHOTGUN LAY BESIDE HIM.

PRONOUNCING IT SUICIDE, AFTER HE HAD DIED A SHORT TIME LATER IN KING COUNTY HOSPITAL, POLICE WERE INVESTIGATING THE APPARENT MYSTERY OF HIS PAST TO FIND A MOTIVE. HE WAS SUPPOSED TO HAVE A WIFE IN EVERETT.

T. M. EWING, THE HOTEL CLERK, TOLD DETECTIVE LIEUTENANT ERNEST WINTER THAT MOORE HAD BEEN DRINKING AND TALKED DESPONDENTLY WHEN HE CAME INTO THE HOTEL SATURDAY NIGHT.

Later, Ewing said, he received a call to Moore's room and found its doors locked. He went back to get a pass-key, but when he returned he found the door open. Moore was crumpled upon the [220] floor, beside the gun.

There was no suicide note, nor were police able to find any clue as to his life before he went to the St. Regis Hotel, scene of the tragedy, a month ago.

Mrs. Catherine Loughery, forty-five, of Everett, was in a critical condition in City Hospital yesterday after, according to police, she attempted to end her life by taking poison.

Another supposed suicide attempt was reported by King County Hospital where Ernest Koontz, fifty-four, of the Adams Hotel, 513 Maynard Ave., was in a serious condition from loss of blood. His wrists had been slashed with a razor blade, attendants reported.

Patrolman M. H. Hanson said he was accosted by Mrs. Loughery at 2nd Ave., and Yesler Way early yesterday morning. She told him she was ill, and he took her to City Hospital, he reported. After being given emergency treatment for poison she was booked "attempted suicide." She gave no reason for wishing to end her life.

Koontz, likewise, was silent as to any motive for his asserted act.

SEATTLE POST INTELLIGENCER, November 5, 1934. Page 13, Col. 4. C.L.S.

NATIONAL EDUCATION WEEK; SCHOOLS OPENED FOR YOU

BANDS TO PLAY FOR PUBLIC GLEE CLUBS. HANDIWORK ON DISPLAY

In observance of American Education Week, Seattle public schools, beginning today, will be open for INSPECTION AND PROGRAMS WILL BE PRESENTED BEFORE SERVICE CLUBS AND CIVIC ORGANIZATIONS TO MAKE THE CITY BETTER ACQUAINTED WITH ITS GREAT EDUCATIONAL PLANT.

School glee clubs, bands, orators and specialized school groups will be on the programs of downtown luncheons during the week.

American Education Week is sponsored jointly by the National Education Association, the United States bureau of education and the American Legion as a means of revealing the educational standards of America's public schools.

The Lincoln High School Glee Club will furnish music at the meeting of the Kiwanis Club at the Hotel Gowman tomorrow noon. Edith Herber, Lincoln High School student, will talk, and other students will present a short play.

Everett Ellis, Lincoln High School student, will give a four-minute talk at the Seattle Advertising Club luncheon at the Mayflower Hotel tomorrow noon. At the same time, the Girls' Glee Club of Ballard High School will sing at the luncheon of the Women's City Club at the Chamber of Commerce Auditorium.

Pupils of the Daniel Bagley elementary school will present "a Market Scene in Naples." There will be choral reading by pupils from the Seward Demonstration School and a talk by Samuel E. Flemming, assistant superintendent of Seattle public schools.

In open house programs to be held at public schools during the week, the many phases of school work will be exhibited. [221]

THE SEATTLE DAILY TIMES, No. 6, November 7, 1934, Page 1, Col. 8 H.R.

WASHINGTON JOINS U. S. IN APPROVAL OF NEW DEAL

Geraghty Is Leading Bell; Handsome Majorities Piled Up in State for Senator Down Line to Constables

The national Democratic landslide swept over Washington yesterday and the Roosevelt New Deal piled up handsome majorities from United States senator down the line to constables.

Lewis B. Schwellenbach, 40-year-old Seattle attorney and former president of the Board of Regents of the University of Washington, was elected United States senator to succeed Senator Clarence C. Dill, who did not seek reelection. Like Dill, Schwellenbach takes office as a bachelor. Dill married in 1927, just before he began his last term. Dill was 38 years old when first elected senator in 1922. Schwellenbach will be a comparative youth in the upper house.

Schwellenbach was leading his Republican opponent, Reno Odlin of Olympia, by a majority which indicated that final figures would show him a victor by nearly 100,000 votes. Schwellenbach carried King County, his home, by about 30,000 and also was leading about 2-to-1 in Odlin's home county, Thurston.

The state vote was expected to total about 425,000, far below expectations. About 200,000 registered

voters stayed home. Rain, particularly in Western Washington, cut down the vote.

The New Order of Cincinnatus vote was meager. William J. Wilkins, Cincinnatus nominee for United States senator, got about one vote for every eight for Schwellenbach in King County; one vote for every five for Odlin. In the South District county commissioner's race the Republican and Cincinnatus votes combined were greater than the Democratic.

The six Democratic congressmen were reelected. John W. Summers of Walla Walla, former Republican representative from the Fourth District made a valiant comeback attempt, but didn't upset Congressman Knute Hill.

Supreme Court Justice James M. Geraghty of Spokane was leading in his fight to be elected to the judicial post to which Gov. Clarence D. Martin appointed him. The race was close, but Justice Geraghty was gaining steadily.

Superior Judge Ralph C. Bell of EVERETT, WHO RAN A NECK-AND-NECK RACE WITH GERAGHTY IN THE PRIMARIES, WAS TRAILING JUSTICE GERGHTY BY NEARLY *14,000* in complete returns.

DEMOCRATS GAINED ONE SEAT EACH IN THE STATE SENATE AND HOUSE OF REPRESENTATIVES, ALREADY STRONGLY DEMOCRATIC.

THE INITIATIVE TO ABOLISH FISH TRAPS, SUPPORTED BY ORGANIZED

GROUPS OF SPORTSMEN, PILED UP A BIG MAJORITY IN KING COUNTY AND WESTERN WASHINGTON, AND CARRIED.

THE BONE POWER BILL, A REFERENDUM TO PERMIT CITIES TO SELL LIGHT AND POWER OUTSIDE THEIR BOUNDARIES, ALSO ROLLED UP A BIG MAJORITY.

INITIATIVE NO. 94, TO STRENGTHEN THE 40-MILL TAX BILL, WAS LEADING, 5 TO 4, IN WESTERN WASHINGTON, DESPITE THE OPPOSITION OF EDUCATIONAL ORGANIZATIONS.

BOTH AMENDMENTS TO THE STATE CONSTITUTION WERE VOTED DOWN. ONE WOULD HAVE OPENED THE WAY FOR A STATE income tax, the other would have centralized more taxing authority in the State Tax Commission.

For the first time in thirty-eight years Democrats captured [222] the King County courthouse, nearly complete, William H. Sears, veteran county detective, was the only Republican leading in eleven contests. William B. Severyns, chief of police in the Brown administration, was trailing him. Other counties also voted in Democratic county officers, the Associated Press reported.

Carl E. Armstrong, chief deputy assessor, and Republican, had but slight chance to catch Roy B. Misener, who resigned as city councilman to run for the assessorship. Rural county returns and the 1,600 absentee votes to be counted next Monday may help Armstrong.

Warren G. Magnuson, chief assistant United States attorney and state representative, was elected county prosecutor over Emmett G. Lenihan, present chief deputy prosecutor.

Sheriff Claude G. Bannick's attempt to be elected treasurer failed. Ralph S. Stacy, acting Treasurer since the disappearance of George G. Wittemeyer, was given a handsome vote, leading the county ticket by a wide margin.

Superior Judges Clay Allen and James T. Lawler were elected. Judges Hugh C. Todd and William G. Long went in without opposition.

Prosecutor Robert M. Burgunder's attempt to dislodge Judge Roger G. Meakim failed, although the race was close. It was nonpartisan contest, but Meakim is a Democrat; Burgunder a Republican.

The Board of County Commissioners will be completely Democratic. Progressive Jack Taylor, Rainier district grocer and business leader, was elected over Samuel J. Humes, Republican, former state director of highways, and one time county engineer, for the South District Commissionership. Commissioner Louis Nash defeated W. W. Connor, Republican, former state senator. Commissioner John C. Stevenson, Democrat, was not up for election.

Justice of the Peace Charles E. Claypool, Reah M. Whitehead and William Hoar were elected without opposition. Justices William R. Bell and Guy B. Knott were elected.

Five Democratic constables won a 3-to-2 lead over

Republicans. The Democrats are Al Strickland, Loren A. Lovejoy, Charles P. Boyle, Tom Kenney, and Howard J. Thompson. Among the defeated Republicans are James E. Shannon and James M. Lambert, who have been in office for nearly a generation. [223]

THE SEATTLE DAILY TIMES, #6, November 7, 1934 — Page 1, Col. 2. H.R.

DEMOCRATS GET ALL BUT ONE OFFICE IN COUNTY

Republicans' 38-Year Rule of Courthouse Ended; Stacy Given Decisive Vote for Treasurer

Republicans will be rare birds around the courthouse after JANUARY 8.

ONLY WILLIAM H. SEARS, REPUBLICAN CANDIDATE FOR SHERIFF WAS LEADING *when the city's 508 precincts were counted last night. Sears is expected to run strong in the 166 rural precincts.* CARL E. ARMSTRONG, FOR ASSESSOR *was the only other Republican given a chance to break the Democratic line-up, and he had to overcome a lead of 2,206 votes.*

Democrats will be firmly in CONTROL OF THE 1,600 COURTHOUSE JOBS. IT WILL BE THE BIGGEST SHAKE-UP IN THIRTY EIGHT YEARS IN COUNTY GOVERNMENT. THE DEMOCRATIC SWEEP MEANT THE END OF THE "CROWN PRINCE" SUCCESSION OF HANDING DOWN OFFICES FROM REPUB-

LICAN CHIEFS TO REPUBLICAN DEPUTIES WITH UNDERLINGS HOLDING JOBS. MANY REPUBLICANS, WHO HAVE BEEN ON THE PAYROLL FOR A SCORE OR MORE YEARS, WILL WALK THE PLANK.

WITH RESULTS COMPLETE FROM THE CITY'S 508 PRECINCTS, RETURNS FROM THE 166 PRECINCTS IN KING COUNTY OUTSIDE OF SEATTLE WERE SLOW IN COMING IN TODAY. DEPUTY AUDITORS WERE SENT OUT INTO THE COUNTRY IN AN AUTOMOBILE TO PICK UP POLLBOOKS AND TAKE THEM TO THE AUDITOR'S OFFICE FOR TABULATION.

Returns telephoned in showed Sears increasing his lead over William B. Severyns in the rural districts. *Armstrong was picking up on Roy B. Misener, but not enough to indicate he would overtake him.*

Election officials in Precinct No. 2, Kirkland, and in the Rose Hill precinct were still tabulating the votes this morning.

In Precinct No. 1, Kirkland, Odlin got 86 and Schwellenbach, 186. Sears received 133 votes to 106 for Severyns.

In the assessor's race Misener got 111 votes and Armstrong 115.

Kent's four precincts added 205 votes to Sear's lead. He polled 572 votes to 367 for Severyns. Armstrong gained 138 on Misener with a vote of

510 to 372, while Schwellenbach polled 591 votes to 388 for Odlin.

MOST DECISIVE RESULT ON THE COUNTY TICKET WAS THE VOTERS' INDORSEMENT OF RALPH S. STACY, FORMER SEATTLE BANKER, WHO WAS APPOINTED ACTING TREASURER WHEN TREASURER GEORGE G. WITTENMYER DISAPPEARED LAST WINTER. STACY LED THE TICKET AND DEFEATED HIS REPUBLICAN OPPONENT, SHERIFF CLAUDE G. BANNICK NEARLY 3 TO 1.

Sheriff Bannick had served two terms and was ineligible to run for sheriff again, so he will step out of public office in January. Prior to his election as sheriff in 1926 he was for many years a member of the Police department.

The vote for prosecutor showed a surprising reversal. Emmett G. Lenihan, chief deputy, who led the county ticket in the primaries, trailed other Republicans yesterday. Warren G. Magnuson, state representative, chief assistant United States attorney and investigator for the most recent county grand jury before he took his federal job, led Lenihan 4 to 3.

Misener, who resigned from the City Council to run for assessor, had enough votes in the city to lead Armstrong, who was second highest Republican.

County Commissioner Louis Nash defeated W. W. Conner, insurance [224] man and former state senator, in the First (City) District. Samuel J.

Humes, state director of highways in the Republican Hartley administration, former county engineer and son of an early day mayor of Seattle, made a better race in the Second (South) District, but Progressive Jack Taylor, Rainier Valley grocer and president of the Rainier Men's Business Club, piled up a good lead.

Commissioner John C. Stevenson was not up for reelection this year.

Nina O. Buchanan, Seattle school teacher, ended the Burrows-Hulse regime in the county superintendency of schools, defeating A. S. Burrows who with Thomas E. Hulse, has ruled the school department for many years.

Similarly, the Corson-Jones administration of the coroner's office went down to defeat. Otto H. Mittelstadt, Ballard mortician, supported by the Commonwealth Builders, the Washington version of the Sinclair program, was elected coroner. The result broke the precedent of electing a physician to this office. Mittlestadt plans to appoint an autopsy surgeon.

Earl Millikin, former high school teacher and a football and basketball official, was elected auditor over Percy F. Thoma , former clerk, who had been chief deputy auditor under George A. Grant, also a former clerk. Millikin was supported by a host of his former pupils and by track stars he had developed.

Carroll Carter, former taxicap driver and an unsucessful candidate for the City Council, was elected over Ben T. Hart, chief deputy county clerk, for

county clerk. Hart has been a deputy for many years. Carter led by nearly 6,000 in the city.

Engineer Thomas D. Hunt failed at reelection, defeated by Joseph P. Dodd, well-known Seattle civil engineer. Hunt had been on the county payroll many years. Dodd for three years was an instructor at the University, and for six years was employed in the city engineer's office.

Edward A. Clifford, son of the former state director of labor and industries, was elected county treasurer for the unexpired Wittenmyer term, and if he qualifies will hold office from the time the county vote is canvassed, probably next Monday, until Stacy's regularly-elected term opens in January. But there is some doubt if Clifford can post the $250,000 bond required for treasurer. If he doesn't, Stacy will hold office for the short term.

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SEATTLE POST INTELLIGENCER, November 8, 1934 — Page 1, Col. 5. C.L.S.

SEVERYNS CUTS SEARS' LEAD TO 653;
STOCK MARKET SHOOTS UP 4 POINTS
AS NEW DEAL VICTORIES SWEEP U. S.

Issue in Doubt Pending Absentee Ballot Poll.
Confident
Straight Ticket Feared by G.O.P. Candidate.

WILLIAM B. SEVERYNS, DEMOCRATIC NOMINEE FOR SHERIFF, SERIOUSLY CUT INTO THE LEAD PILED UP BY his Republican

opponent, William H. Sears, as belated King County returns trickled in yesterday from precincts outside Seattle.

When the auditor's office shut down for the day at 5 p.m., returns from sixty-eight suburban precincts had cut down Sears' city lead of 1,326 to 653, with ninety-eight suburban precincts still to be heard from.

Sears headquarters were still confident last night he would win the election by a narrow margin, but Joseph Whetstone, Democratic county chairman, claimed the election for Severyns.

He said that a party check of all outstanding suburban precincts except sixteen small and more or less inaccessible ones showed Severyns had completely eliminated the majority Sears polled in the city and put the Democratic candidate in the lead by more than 500 votes.

Whetstone added that he expects Severyns to poll also a substantial majority of the 1,790 absentee ballots that are to be opened Monday.

Sears' supporters decline to concede that their candidate's lead had been completely eliminated in the suburban districts and were awaiting the unofficial count of the auditor today. They were pessimistic, however, about the absentee ballots, believing that many of them had been cast by state employes who voted a straight Democratic ticket.

Confident that Severyns will be elected Whetstone issued a victory proclamation in which he congratulated Democrats for their team work in mak-

ing a clean sweep of the county ticket.

THE SHERIFF'S RACE WAS THE ONLY ONE ON THE COUNTY TICKET IN TUESDAY'S ELECTION ABOUT WHICH ANY DOUBT REMAINED. IN EVERY OTHER INSTANCE THE DEMOCRATIC CANDIDATE WAS ASSURED OF ELECTION—ALTHOUGH THERE WERE SUBSTANTIAL VARIATIONS IN THE SIZE OF MAJORITIES.

NEXT TO THE CONTEST BETWEEN SEARS AND SEVERYNS, THE MOST NEARLY EVEN FIGHT WAS BETWEEN ROY B. MISENER AND CARL E. ARMSTRONG, DEMOCRATIC AND REPUBLICAN NOMINEES FOR COUNTY ASSESSOR, RESPECTIVELY. [226]

SEATTLE POST INTELLIGENCER, November 8, 1934. Page 3, Col. 8. C.L.S.

SCHOOL FUND CUT OF 10 PCT. SEEN IN ACT.

Reduction Due to Initiative 94 Will Not Be Felt Until 1935, Educational Group Declares

Although its effect will not be felt this year, the passage of Initiative 94 at Tuesday's election will result in a reduction of about 10 percent in the total current revenue of Washington State schools for the 1935-36 SCHOOL YEAR, OFFICERS OF THE WASHINGTON EDUCATION ASSOCIATION SAID YESTERDAY.

BECAUSE THE LEVIES FOR 1934, PAYABLE IN 1935, ARE ALREADY SPREAD ON THE TAX ROLLS, REVENUES FOR THE PRESENT SCHOOL YEAR WILL NOT BE AFFECTED.

IT WILL BE VIRTUALLY IMPOSSIBLE FOR MOST OF THE STATE'S 400 SCHOOL DISTRICTS NOW DEPENDENT ON EXTRA MILLAGE TO VALIDATE AN EXTRA LEVY, BECAUSE OF THE NEW RESTRICTION RESTRICTION REQUIRING THAT MORE THAN HALF THE VOTERS PARTICIPATE IN AN ELECTION ON A SPECIAL LEVY.

INSTITUTIONS OF HIGHER EDUCATION WILL BE RESTRICTED TO ABOUT 60 PERCENT OF THEIR NORMAL INCOME, IT WAS ESTIMATED BY ARTHUR L. MARSH, EXECUTIVE SECRETARY OF THE WASHINGTON EDUCATION ASSOCIATION.

This reduction in income will work particular hardships on the University of Washington, Marsh pointed out, because of the great increase of enrollment.

SEATTLE POST INTELLIGENCER, November 8, 1934. Page 2, Col. 6. C.L.S.

DEMOCRATS INCREASE MAJORITY BY EIGHT IN STATE LEGISLATURE.

BOTH HOUSES OF THE 1935 WASHINGTON LEGISLATURE WILL HAVE HEAVIER DEMOCRATIC MAJORITIES THAN AT THE

1933-34 SESSIONS, ACCORDING TO NEARLY COMPLETE RETURNS LAST NIGHT FROM LEGISLATIVE DISTRICTS.

AMONG REPUBLICAN VETERANS WHO SURVIVED THE 1932 LANDSLIDE, ONLY TO FALL VICTIM TO THIS YEAR'S AVALANCHE WERE SENATORS PAUL HOUSER OF KING COUNTY, E. J. CLEARY OF WHATCOM AND HENRY FOSS OF PIERCE.

REPRESENTATIVES W. S. WESTOVER OF GRAYS HARBOR AND GRANT SISSON, THE LATTER A CANDIDATE FOR SPEAKER OF THE HOUSE *IF* REPUBLICANS HAD REGAINED CONTROL, WERE AMONG THE HOUSE CASUALTIES.

A CHECK OF THE SENATE YESTERDAY SHOWED THIRTY-FOUR DEMOCRATIC MEMBERS DEFINITELY ELECTED OR LEADING BY SUBSTANTIAL MARGINS, nine Republicans elected or leading, two districts unreported and one vacancy. This is the seat of Senator William Bishop of Jefferson County, who died the day before the election. The vacancy will be filled by joint action of Jefferson, Mason and Clallam county commissioners. In the last senate the Democrats held twenty-six house seats.

A check of the house showed eighty-two Democrats definitely elected or leading, thirteen Republicans definitely elected or leading and four positions unreported.

Democrats elected seventy members of the house in 1932.

Available returns by the Associated Press show the following elected:

Senate

1st District—Douglas—Okanogan—Horace E. Smith (Republican), holdover.

2nd—Stevens—Pend Oreille—David E. McMillan (Democrat).

3rd—Spokane—W. R. Ondorff (Democrat).

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4th—Spokane—Ed Pierce (Democrat), holdover.

6th—Spokane—Fred S. Duggan, (Democrat).

7th—Spokane—Joseph Drumheller (Democrat).

8th—Ferry, Lincoln, Adams—J. P. Keller (Democrat).

9th—Whitman.

10th—Asotin, Garfield, Columbia—John P. Worum (Democrat), Holdover.

11th—Walla Walla—Arthur E. Cox (Republican), Holdover.

12th—Chelan—John H. Ferryman (Democrat), holdover.

13th—Grant, Kittitas—Walter G. Ronald (Democrat).

14th—Yakima—George McAuley (Democrat).

15th—Yakima—A. M. Murfin, (Democrat).

16th—Benton, Franklin, Klickitat, and Skamania—C. F. Stinson (Republican), holdover.

17th—Clark—H. L. Nelson (Democrat), holdover.

18th—Cowlitz, Wahkiakum—Frank G. Barnes, (Republican) Holdover.

19th—Pacific, Grays Harbor—Fred Norman (Republican), holdover.

20th—Lewis—Dr. D. O. Nugent (Democrat), holdover.

21st—Grays Harbor.

22nd—Thurston—E. N. Steele (Democrat), holdover.

23rd—Kitsap—Paul Mehner (Democrat), hold over.

24th—Mason, Jefferson and Clallam—William Bishop (Republican), holdover, (x)

(x) Died day before election. His successor to be chosen by county commissioners.

25th—Pierce County—C. Nifty Garrett (Democrat), holdover.

26th—Pierce—Ralph Metcalf (Republican).

27th—Pierce—Kathryn Malstrom (Democrat), holdover.

28th—Pierce—J. H. Ryan (Democrat), holdover

29th—Pierce—G. B. Kerstetter (Democrat).

30th—King—H. I. Kyle (Democrat).

31st—King—Earl Maxwell (Democrat).

32nd—King—Edmund J. Miller (Democrat).

33rd—King—James A. Murphy (Democrat).

34th—King—Paul G. Thomas (Democrat).

35th—King—James Dailey (Democrat).

36th—King—George A. Lovejoy (Democrat).

37th—King—Judson W. Shorett (Democrat).

38th—Island, Snohomish—L. E. Tewksbury, (Democrat).

39th—Island, Snohomish—Keiron W. Reardon (Democrat) holdover.

40th—San Juan, Skagit—W. J. Knutzen (Republican), holdover.

41st—Whatcom—Scott M. Ryan (Democrat) Holdover.

42nd—Whatcom—S. C. Roland (Democrat).

43rd—King—W. C. Dawson (Republican).

44th—King—Charles H. Todd (Democrat).

45th—King—P. Frank Morrow (Democrat).

46th—King—E. L. Howard (Democrat).

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SEATTLE POST INTELLIGENCER, November 8, 1934 — Page 2, Col. 5. C.L.S.

STATE SALES TAX PROBABLE AS BILLS FAIL

Legislators Express Belief Plan Offers Logical Revenue Source; Martin Studies Move

A state sales tax is looming around the corner for Washington.

This was the belief of many reelected members of the legislature yesterday, as they surveyed the results of Tuesday's election on tax issues.

THE PASSAGE OF INITIATIVE NO. 84 WILL REDUCE STATE FUNDS AVAILABLE FOR STATE AID FOR SCHOOLS ABOUT THREE MILLION DOLLARS. ADDITIONAL RESTRICTIONS IN THE SAME MEASURE, EDUCATORS SAY, WILL MAKE IT VIRTUALLY IMPOSSIBLE FOR DISTRICTS TO MAKE SPECIAL LEVIES, AS THEY DO NOW, AND THEY WILL ACCORDINGLY NEED MUCH MORE STATE AID.

THE STATE TAX COMMISSION HAS BEEN STUDYING A PROPOSED PROGRAM INCLUDING A GRADUATED STATE INCOME TAX AND A DOUBLING OF THE present business occupational tax. But the defeat of the income tax amendment makes a graduated income tax impossible under the state constitution.

Individual members of the commission have figured that if the 1935 legislature adopts the relief and old age pensions program already outlined by Gov. Clarence D. Martin the state will in indirect taxes need approximately seventeen million dollars a year, in place of the six million dollars now raised by the occupational tax. The occupational tax expires by its own limitations on July 31, 1935.

A 2 percent retail sales tax has been variously calculated to raise from twelve million dollars to fifteen millions dollars annually.

Whether the Tax Commission proposes a sales tax or not, it is believed that it will recommend increases in excise rates on railroads and utilities. The commission's figures show that these groups will be the heaviest gainers under the reduced property taxes of Initiative No. 94.

Governor Martin is expected to make the first official pronouncement of the administration's tax program, probably in a radio broadcast.

The governor for a time was reported considering a preelection talk on this issue. But the crowded ether wages and the uncertainty of what voters would do on Initiative No. 94 and the tax amendments led him to postpone action. [229]

SEATTLE POST INTELLIGENCER, November 8, 1934; Page 2, Col. 4. C.L.S.

SCHWELLENBACH LEAD PASSES 100,000 MARK

"New Dealers" Win Increased Majorities In Legislature; Primary Vote Ratio Surpassed

By E. B. Fussell

RETURNS LATE yesterday FROM TUESDAY'S ELECTION INDICATED THAT THE DEMOCRATIC LEANDSLIDE IN WASHINGTON WILL PORVE EVEN MORE COMPLETE THAN in 1932.

LEWIS B. SCHWELLENBACH'S PLURALITY FOR SENATOR PASSED THE 100,000 MARK AND PROMISED TO MOUNT MUCH HIGHER. APPARENTLY THE DEMOCRATIC SENATOR-ELECT CARRIED EVERY COUNTY IN THE STATE OVER RENO ODLIN, REPUBLICAN NOMINEE.

DEMOCRATIC CONGRESSMEN WERE ALL REELECTED.

DEMOCRATS GAINED INCREASED MAJORITIES IN BOTH HOUSES OF THE STATE LEGISLATURE AND THE NEW DEAL SWING CARRIED DEMOCRATIC CANDIDATES TO VICTORY FOR LOCAL OFFICES IN THE MAJORITY OF COUNTIES.

AS AGAINST A 60-40 PERCENT DIVISION OF BALLOTS AT THE PRIMARY ELECTION,

AND A 63-37 PER CENT DIVISION BETWEEN ROOSEVELT AND HOOVER AT THE 1932 GENERAL ELECTION, THE SCHWELLENBACH-ODLIN RATIO WAS *approximating* 64-36 PER CENT OF LATE RETURNS YESTERDAY, AND FOUR OF THE DEMOCRATIC CONGRESSMEN POLLED MORE THAN DOUBLE THE VOTES OF THEIR G.O.P. OPPONENTS.

THE TWO INITIATIVE MEASURES ON THE BALLOT, No. 77, THE FISH BILL, AND NO. 94, THE TAX BILL, CARRIED BY SUBSTANTIAL MARGINS, AS DID THE ONE REFERENDUM, NO. 18, THE BONE POWER BILL.

TWO PROPOSED CONSTITUTIONAL AMENDMENTS, DESIGNED TO ALTER THE STATE'S TAXATION SYSTEM AND ALLOW A STATE INCOME TAX, WERE DEFEATED BY PRONOUNCED VOTES.

Justice J. M. GERAGHTY WAS RETURNED TO THE SUPREME COURT OVER SUPERIOR JUDGE RALPH C. BELL OF EVERETT.

YESTERDAY'S RETURNS SETTLED DEFINITELY EVERY STATEWIDE CONTEST. ONLY OCCASIONAL LOCAL CONTESTS FOR COUNTY AND LEGISLATIVE OFFICES WERE LEFT IN DOUBT.

THE BELLINGHAM HERALD, November 8, 1934. Page 2, Col. 2. H.R.

LEAD IS RETAINED

Final Returns Fail to Change Standings in Skagit.

(Special to the Herald)

MOUNT VERNON, Nov. 8.—Final returns today failed to change the standing of candidates for Skagit county offices. The final unofficial count showed the FOLLOWING RESULTS:

ASSESSOR—PAUL NEILAN (D), 6,082; W. R. Whitney (R), 5,591

TREASURER — GEORGE DUNLAP (D), 6,231; Edward Danielson (R) 5,131;

AUDITOR—CARL P. KLOCKE (D), 5,986; Paul Elde (R), 5,632

Clerk—Williak B. Ellis, (R), 6,010; Daisy B. Foster (D) 5,613

Sheriff—Pat McCarthy (D) 6,750; Charles Fleming (R) 5,315.

Prosecutor—Richard Welts (D), 6,846; Warren Gilbert (R) 4,993

School Superintendent — Frank Brock (R), 7,322; Mrs. Essie Engle (D), 4,564.

COMMISSIONER, FIRST DISTRICT—WALLACE SHARPE (R), 5,766; A. P. Walker (D), 5,462.

COMMISSIONER, SECOND DISTRICT—J. T. MASON (D), 6,039; Emil Wersen (R) 5,027.

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THE SEATTLE DAILY TIMES, November 8, 1934. Page 1, Col. 2 H.R.

ABSENTEES TO DECIDE CLOSE RACE FOR SHERIFF

Auditor's Count Shows Sears Leading by 357; The Times' Poll Gives Democrat 134 Margin

ONE OF THE MOST SENSATIONAL UPSETS OF TUESDAY'S ELECTION HAD MADE THE OUTCOME OF THE KING COUNTY SHERIFF'S CONTEST A HORSE RACE TODAY. WHEN NEARLY EVERYONE FROM CITY AND EARLY RURAL RETURNS, HAD ALMOST CONCEDED WILLIAM H. SEARS VICTORY, HIS OPPONENT, WILLIAM B. SEVERYNS, STARTED MAKING GREAT GAINS. AND TODAY THE TOTALS WERE SO CLOSE THE WINNER PROBABLY WILL NOT BE KNOWN UNTIL UNOFFICIAL RETURNS ARE CORRECTED AND 1,790 ABSENTEE BALLOTS ARE COUNTED next week.

The auditor's office this forenoon announced it had listed 621 of the 674 precincts in city and county and showed Sears leading by 357 votes. The total was: Sears, 61,722; Severyns, 61,365. This left 53 precincts uncounted.

At the same time, a tabulation of returns gathered by The Times by telephone yesterday and today from county towns and polling places showed Sev-

eryns leading by 134 votes, with 47 rural precincts missing.

It was impossible to tell how many of the 47 precincts missing in the latter poll were in the auditor's missing 53 precincts. Both lists were subject to correction;

Severyns' gains in the county whittled away a Sears lead that had been as great as 1,600 votes. Sears headquarters still believed the Republican would emerge in the lead from the final and official canvass, but Joseph Whetstone, Democratic county chairman, forecats a 600-vote margin for Severyns.

The victory of Lewis B. Schwellenbach over Renò Odlin in the United States senator contest was nearing a 115,000-vote margin as reports were garnered from the state. In King County the Republican who ran the next best race to Sears, Carl E. Armstrong, was falling farther behind Roy B. Misener, former city councilman, for assessor.

The flood tide of Democratic success washed Warren G. Magnuson into the office of prosecuting attorney to win from Emmett G. Lenihan. It elected Ralph S. Stacy county treasurer over Claude G. Bannick. It made Carroll Carter county clerk, Earl Millikan county auditor, Otto H. Mittelstadt county coroner, Nina O. Buchanan superintendent of schools and Joseph P. Dodd engineer. Louis Nash kept his city district seat among the county commissioners, and Jack Taylor entered the commissioners' ranks from the south district. [231]

That each of the foregoing articles marked "Associated Press", "AP" or in the body of which occurs the words "According to the Associated Press" or "The Associated Press reported", or substantially similar language, are articles which were compiled as news by complainant from its own efforts over the various respective portions of the world as is indicated; that the above articles denominated "Local" were each and all what is constituted and called "Local News" acquired through the efforts of the particular newspaper in which the same is shown to have appeared and as such local news under the rules and by-laws of complainant referred to in the records and files herein belonged exclusively to the complainant, so that therefore, all of the articles so above set out, whether local news or otherwise, were news items which were the property of complainant, which the defendant had no right to appropriate.

That by a comparison of the above articles so copied from said newspapers and which originally appeared in such newspapers, and which defendant is shown to have pirated and broadcast over its said radio station KVOS, it plainly and absolutely appears that in many instances the exact language used in such articles as they originally appeared in said newspapers was used by the broadcaster when broadcasting these news articles over defendant's radio station, and that it is humanly impossible for

any two individuals so exactly to reproduce such articles in the same words.

HALLOCK E. REEVES
CHARLES L. SEFRIT
BEN H. SEFRIT
W. C. CARVER

Subscribed and sworn to before me this 30th day of November, 1934.

[Seal] J. W. KINDALL
Notary Public in and for the State of Washington, residing at Bellingham.

[Endorsed]: Filed Dec 3, 1934. [232]

[Title of Court and Cause.]

MEMORANDUM DECISION.

This cause is now before the court on complainant's bill of complaint, order to show cause why a temporary injunction should not issue, defendant's motion to dismiss the bill, and supporting affidavits on both sides of the controversy.

The record discloses several points for decision, but the question most strenuously urged upon the court's attention is whether defendant radio station, not engaged in supplying news to other radio stations for broadcasting by them, can broadcast over its own station gratuitously to its radio listeners news reports supplied by complainant news agency to its member newspapers, after those news

reports have been printed in regular issues of the newspapers and distributed to the public. The case is an important one, and a proper consideration of it necessitates the full statement of facts and issues now following.

The bill of complaint alleges that complainant, The Associated Press, is a corporation, and a resident and citizen, of New York; that the defendant is a Washington corporation, having its principal place of business at Bellingham in said state; and that the amount in controversy is in excess of $3000.00, exclusive of interest and costs. [233]

That complainant was incorporated in 1900 under the Membership Corporations Law of the State of New York and its members are the proprietors or representatives of numerous newspapers, morning and evening, published throughout the United States; that complainant is engaged in gathering from sources all over the world, through its own instrumentalities and by exchange with its members and others and by other appropriate means, any and all kinds of information, news and intelligence, telegraphic or otherwise, for the use and benefit of its members and distributing the same among its members for publication in the newspapers owned or presented by them, under and subject to the provisions of complainant's by-laws; that complainant has its own representatives in every important city in the world; that it has reciprocal arrangements with many important news agencies in foreign countries for interchange of

news; that it has more than 1200 members, each owning or representing a daily newspaper in the United States; that each of these members, as required by complainant's by-laws, supplies to complainant local news gathered by such member; that such news is promptly transmitted by wire or telephone to complainant's members and their newspapers; that complainant is thus able to assure to its members prompt collection and transmission of news from every point in the world; that complainant incurs great cost in collecting local and foreign news and interchanging news with other news agencies, such cost amounting each year to many millions of dollars, which is equitably divided amongst complainant's members, in accordance with its by-laws.

That such service of complainant is of great financial and business importance to its members because it is practically and financially impossible for any one member alone to establish or maintain a requisite organization for collecting world news; that such cost is prohibitive to any one member acting alone; that such service, or similar service of world wide collection of news, is essential to modern daily newspapers and can be obtained only through a [234] cooperative system or by purchase of news from some existing news agency privately owned; that in addition to the business importance to its members, such service of complainant is of great public importance in that it provides an accurate and impartial news service to the public.

That such news service furnished by complainant to its members depends for its value to such members upon the promptness, accuracy and impartiality of the news furnished and on the transmission thereof by complainant to its members earlier than similar information can be furnished to other newspapers competing with complainant's members; that complainant's members are required not to furnish non-member newspapers with such news; that complainant's plan of operation requires that news collected by it shall remain confidential and secret until publication of its news has been fully accomplished by all of complainant's members, in order that competing newspapers and news agencies shall not receive the benefit of complainant's service without paying therefor; that news received through complainant's service is, by complainant's by-laws, received exclusively for publication in member newspapers and upon the condition that members shall make no other use of such news and that members and their employees will not furnish complainant's news in advance of publication to any non-member and will not permit any one else to furnish such news, including local news gathered by any member, to non-members.

That the defendant KVOS conducts a radio station in the city of Bellingham, Washington, which make daily broadcasts from 7 o'clock in the morning to 11 o'clock in the evening, consisting of programs of substantially the same kind as commonly given by radio broadcasting stations; that the de-

fendant radio station, as a part of its daily programs, conducts three times daily news broadcasts, commonly called "Newspaper of the Air"; that the first of such news broadcasts is from 9:15 to 9:45 o'clock A. M., the second from 12:15 to 12:45 during the noon hour, and the third and last is from 7 to 7:45 o'clock in the evening; [235] that defendant claims and the fact usually is that such radio news broadcasts comprise the reading of the most important and most interesting news events of the day.

That three of complainant's member newspapers, to-wit: the Bellingham Hearld, published at Bellingham, Washington, the Seattle Post-Intelligencer and the Seattle Daily Times, both of Seattle, Washington, about 93 miles distant from Bellingham, publish and distribute daily newspapers, including news furnished and controlled by complainant's news service, in the territory served by defendant's radio broadcasting station; that for each morning broadcast from 9:15 to 9:45 o'clock defendant radio station obtains copies of the morning editions of the Bellingham Herald and Seattle Post-Intelligencer and systematically reads therefrom the whole or most important paragraphs or parts, sometimes verbatim and sometimes slightly rearranging the wording, of the most important and most interesting news items in those newspapers, including the items furnished to such newspapers by complainant and including news items gathered by its member newspapers as local news and belonging to complainant;

that for defendant's evening broadcast of each day, except Sunday, from 7 to 7:45 o'clock, defendant regularly obtains copies of the latest editions of the Bellingham Herald, evening edition, and the Seattle Daily Times, and systematically reads therefrom such news items; that the morning edition of the Bellingham Herald, so used by defendant, goes to press at approximately 3:30 o'clock A. M. of each day; that the morning edition of the Seattle Post-Intelligencer, so used by defendant, includes all of the news furnished by complainant to it up until 11:30 o'clock in the evening of the day before; that the evening edition of the Bellingham Herald, so used by defendant, includes all of the news furnished by complainant to it up to 4 o'clock of the afternoon of each day; that the evening edition of the Seattle Daily Times, so used by defendant, includes all of the news furnished by complainant to it up to 10 o'clock in the forenoon of the day it is published; that each one of [236] these newspapers label local news items as "local news", which as to republication is controlled by complainant.

That in respect to publishing of such news items the defendant radio station is in competition with those three newspapers; that defendant conducts such news broadcasts as a part of its business of operating its radio station; that its radio station is a business enterprise conducted for profit, the profit being derived from sale of time over its radio station for advertising purposes to persons, firms and corporations desiring to advertise their businesses

or products and desiring to purchase time from defendant radio station in which to advertise and promote their businesses or products; that the value of such time for advertising purposes of defendant's radio station depends practically entirely upon the popularity of its station, that it, upon the number of persons who usually listen to defendant's radio programs; that the object and purpose of such radio news broadcasts over the defendant's station is to popularize its station by making its programs interesting through news broadcasts and thereby inducing a greater number of persons to listen to defendant's programs, whereby the value of time over defendant's broadcasting station for such advertising purposes is enhanced.

That the major portion of revenue derived by complainant's newspaper members is derived from the sale of space in those newspapers for advertising purposes; that the value of such newspaper advertising space depends largely upon the number of readers of the newspapers and the number of such readers depends practically entirely upon the freshness and interest of the news, intelligence and information contained in the newspapers; that such news ceases to be fresh and interesting after it has become generally known and that the "news value" of such news is practically destroyed as soon as, or shortly after, the same becomes generally known; and that by virtue of the matters aforesaid defendant has become and is a competitor of complainant and [237] its newspaper members in the obtaining

and distribution of news, and such competition necessarily involves rivalry and business competition in being the first to obtain and distribute such news for the purpose of popularizing and making more attractive the respective advertising mediums of the defendant's radio station and complainant and its newspaper members.

That the defendant radio station does not have any organization of its own for the purpose of gathering or obtaining news except as to some local items not complained of and does not purchase news from any news agency, but on the contrary regularly and continuously follows the practice of "pirating" the news, intelligence and information gathered at great expense by complainant and its members as mentioned above; that such practice of defendant constitutes unfair competition by defendant against complainant and its members, depriving them of the just benefits of their labors and expenditures, and causing dissatisfaction among complainant's newspaper members, due to the fact that defendant is thus able to spread and disseminate, throughout the territory served by its station, in advance of dissemination by complainant's members, the same identical news which is paid for and obtained by the members from complainant; that, in effect, if defendant radio station continues such practice of pirating complainant's news in the future, complainant and its members will suffer irreparable injury and damage therefrom and complainant's efforts and expenditures to gather and

obtain news will be rendered largely without reward or value so far as concerns the territory served by defendant radio station; that complainant is without speedy, complete or adequate remedy at law or otherwise except through injunction, and an appropriate prayer for injunctive relief is set out in complainant's bill of complaint.

Upon filing its bill of complaint and upon application of complainant supported by affidavits, the court [238] issued the above mentioned show cause order directing the defendant to show cause why a temporary injunction should not issue pending trial on the merits and restraining defendant from such alleged pirating of news pending the hearing on show cause order. Thereupon defendant appeared by motion to dismiss the bill of complaint on the grounds, among others, that the bill does not recite facts sufficient to entitle plaintiff to the relief prayed for and is without equity; that in fact the amount in controversy does not exceed the sum of $3000 exclusive of interest and costs; and that the Bellingham Herald, a local corporation, is a necessary party complainant and that the failure to join the Bellingham Herald is the result of collusion between complainant and the Bellingham Hearld, designed to avoid appearance of the fact stated in defendant's motion that by reason of the absence of the Bellingham Herald as a party complainant, there does not exist in reality the requisite diversity of citizenship. Defendant also filed affidavits in response to the show cause order, and to de-

fendant's affidavits complainant filed rebuttal affidavits. The matter was argued on the questions raised by the show cause order and motion to dismiss, and submitted to the court on briefs.

Plaintiff cites: Internation News Service v. Associated Press, 248 U.S. 215; Chamber of Commerce v. Federal Trade Commission, 13 F. (2d) 673; Miles v. Wasmer, Inc., 172 Wash. 466; The Associated Press v. Sioux Falls Broadcast Association, decided by Judge Jas. D. Elliott of the United States District Court of South Dakota at Sioux Falls, on March 14, 1933, being cause No. 377, S. D. Eq.; Times Picayune Publishing Co. v. Chalt, District Court for the Parish of New Orleans, Louisiana, decided June 29, 1933; Unfair Competition and Trademarks, (2nd ed.) by Henry Nims (intro.); Hopkins on Trademarks, Tradenames and Unfair Competition (3rd Ed.); pages VIII and 365; Unfair Competition and Trademarks, (2nd Ed.) by Henry Nims, page 739; Board of Trade v. Christie Grain & Stock Co., 198 U.S. 236; National Teleg. News Co. v. [239] Western U. Teleg. Co. 119 Fed. 294; Moore v. New York Cotton Exchange, 296 Fed. 61; Coca-Cola Company v. The Old Dominion Beverage Company, 271 Fed. 600; Hoffman Brewing Company v. M'Elligott, 259 Fed. 321; Connecticut Tel. & Electric Co. v. The Automotive Engineering Company, 14 F. (2d) 957; Marucci v. United Can Company, 278 Fed. 741; Kinney-Rome Company v. Federal Trade Commission, 275 Fed. 665; Milliken v. Stone, 16 F. (2d) 981; Produce Reporter Company

v. Fruit Produce Rating Agency, 1 F. (2d) 58; Jeweler's Circular Publishing Company v. Keystone Publishing Company, 281 Fed. 83; Hubbell v. General Electric Company, 262 Fed. 155; Cleveland Cliffs Iron Company v. Kinney, 262 Fed. 980; Criterion Advertising Company v. Seely, 4 F. (2d) 932; Vick Chemical Company v. Vick Medical Company, 8 F. (2d) 849; Reichelderfer v. Quinn, 287 U.S. 315; Cheney Bros. v. Doris Silk Corporation, 35 F. (2d) 297; 47 U.S.C.A., Sec. 605; Board of Trade v. McDermott Company, 143 Fed. 188; Wreckmeister v. American Lithograph Co., 134 Fed. 321; Board of Trade v. Tucker, 221 Fed. 305; Coca-Cola Co. v. Old Dominion Beverage Corp. 271 Fed. 600; Montgomery, Section 210; Southwestern Tel. & Tel. Company v. Walker Grain Company, 3 F. (2d) 819; Montgomery, Sec. 207; West v. Woods, 18 Fed. 665; Eisele v. Oddie, 128 Fed. 941; Ragsdale v. Rudich, 293 Fed. 182; American Railroad Company v. South Porto Rico Sugar Company, 293 Fed. 670; Brendt v. Charles H. Lilly Company, 202 Fed. 335; Local No. 7 of Bricklayers', Etc. Union v. Bowen, 278 Fed. 271; Presto Light Company v. Bournonville, 260 Fed. 440; Federal Equity Rules, Rule 39, Hopkins (6th ed.) p. 228; Norfolk Southern R. Co. v. Stricklin, 264 Fed. 546; Thomas v. Anderson, 223 Fed. 41; Wolrath v. Roberts, 12 F. (2d) 443; Sioux City Terminal R. & W Company v. Trust Company, 82 Fed. 124; Equitable Trust Company v. Denney, 24 F. (2d) 169; 'Motgomery's Manual of Federal Jurisdiction and Procedure, (3rd ed.) Sec.

178; Federal Equity Rule 38, Hopkins (6th ed.) p. 226; Merchants' & Manufacturers Traffic Ass'n. v. U. S. 231 Fed. 292; Foster's Federal Practice (6th ed.) Sec. 114; Hopkins Federal Equity Rules (6th ed.) p. 189; Wright v. Barnard, 233 Fed. 329; Bogert v. Southern Pacific Railroad, 211 Fed. 776; Destructor Company [240] v. City of Atlanta, 219 Fed. 996; Fordham v. Hicks, 224 Fed. 810; Ralston Steel Car Company v. National Dump Car Company, 222 Fed. 590; Rorick v. Board of Commissioners, 27 F. (2d) 377; Loughran v. Quaker City Chocolate Company, 281 Fed. 186; and O'Keefe v. City of New Orleans, 273 Fed. 560.

Defendant cites: Montgomery's Manual of Federal Jurisdiction and Procedure, Secs. 183, 178, 176, 89, 174, 200, 209, 201, and 211; 2 A.L.R. 312; 21 C.J. 258, 260, 263, 273 to 275, Vashon Fruit Union v. Godwin & Co., 87 Wash. 384; 14 C.J. 57, United Copper Securities Co. v. Copper Co., 24 U.S. 261; Interventions News Service, 63 Law Ed. 212 (notes); 14 C.J. 929; Opportunity Christian Church v. Wash. Water P. Co., 136 Wash. 116; Montgomery's Manuarl of Federal Jurisdiction and Procedure, p. 577; 2 A.L.R. pp. 302 and 304; The Law of Radio Communication by Stephen Davis, p. 1; Journal of Air Law, 1931, Vol. II, p. 63 (case decided by Supreme Court of Germany, April 29, 1930); Air Law Review, published by Board of New York University Law School in 1933, Vol. 4, p. 323; Piracy of Broadcasting Programs, by Louis G. Caldwell, 30 Columbia Law Review, p. 1087; Journal of the Senate,

48th Congress, First Session, p. 548, Senate Bill No. 1728; House of Lords, Sessional Papers, 1898, Vol. III, Bill No. 21, Davies v. Bowes, 209 Fed. 56; International News Service v. Associated Press, 63 Law Ed. 212 (notes); Board of Trade v. Christie Grain Co. 198 U.S. 236; Harold Lloyd Corporation v. Wittier, 65 Fed. (2d) 1; Waters v. Phillips, 284 Federal 237; 204 Fed. 299; 190 Fed. 767; 19 Fed. 641; McCarthy v. Bunker Hill Co., 164 Fed. 927; Ex parte Young, 209 U.S. 123; Farmers Bank v. Commissions, 295 Fed. 755; The Rights and Privileges of the Press, p. 87; The Tribune Company of Chicago v. Associated Press, 116 Fed. 126; New York and Chicago Grain v. Stock Exchange, 19 N.E. 855; Munn v. Illinois, 94 U.S. 113; 22 American Journal of International Law 385; Cheney Bros. v. Doris Silk, 35 F. (2d) 279; Reichelderfer v. Quinn, 53 Sup. Ct. Rep. 159; Public Ledger v. New York Times, [241] 275 Fed. 562, Dodge Corp v. Comstock, 251 N.Y.S. 172; and Atlantic Monthly Pub. Co. v. Post Pub. Co., 27 F. (2d) 556; Art. I, Sec. 8, par. 8, of U. S. Constitution.

BOWEN, District Judge:

The rule is that a motion to dismiss in equity must be judged solely by plaintiff's pleadings and for the purposes of the motion all facts well pleaded are taken as true. The question raised in defendant's motion that in fact the amount in controversy does not exceed the sum of $3000.00 is, by that rule, disposed of adversely to the defendant.

The question raised, also, in the motion to dismiss that there is a defect of parties complainant in that the Bellingham Herald was not joined, must likewise be resolved against defendant, upon the authority of Federal Equity Rule 38, Hopkins (6th ed.) Page 226, which provides:

> "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole",

and upon the authority of Merchants & Manufacturers Traffic Ass'n. v. U.S., 231 Fed. 292, where the court said:

> "We see no objection to classes of persons similarly situated being represented by an association or other organization and coming into the controversy under the common name. This, we think, brings this case within the well-known rule that bills may be filed in the name of an unincorporated association and by parties on behalf of others similarly situated."

and in view of the further fact that it is alleged in complainant's bill, paragraph 5, page 2, "that complainant has more than 1200 members, each owning or representing a daily newspaper in the United States," and as stated elsewhere in the bill in effect that those members are similarly situated.

The foregoing leaves to be disposed of only the remaining question, also raised by the motion to dismiss, as to whether the bill states a cause of action

in equity or any facts entitling complainant to the relief now sought. [242]

Responding to complainant's bill and affidavits alleging that defendant obtains copies of morning editions of complainant's member newspapers and systematically reads therefrom over the radio to defendant's radio listeners the news reports in question, the statements in the affidavit of L. H. Darwin on behalf of defendant categorically deny those allegations on behalf of complainant and set forth many news sources, other than complainant's news service, available to affiant by reason of his previous experience as a newspaper man and public official and of his broad acquaintanceship.

Affiant Rogan Jones, in this affidavit on behalf of defendant, states in effect that as to the general news reports used in such radio news broadcasts, the same are obtained by the defendant under its contract with Radio News Association of New York City, which is a radio news service maintained for radio broadcasting stations which contract for that service, and that such news reports are broadcast from New York by that Association to defendant and others entitled to them, by short wave length, three or more times daily, from 6 to 7 A. M., 9:30 to 10:30 A.M., 2 to 3 P.M., and 5:30 to 6 P.M., Pacific Standard Time; that such news is copyrighted and is received by KVOS in Continental Code by a licensed operator on a special high-grade and expensive apparatus in Bellingham over an antennae arranged, located and designed especially for

this news feature, after long and expensive experimentation by defendant's station. The statements in complainant's affidavits that defendant has in many specific instances read general and local news items claimed to belong to complainant's news service, or substantial portions of such items, are clear and convincing, and, when considered in connection with the less specific statements in defendant's affidavits as to defendant's sources of general and local news information, compel the conclusion, and the court so finds, that defendant has in its radio news broadcasts taken and "pirated" local and general news dispatches in some [243] specific instances as charged by complainant, but not until after such news items were published and distributed to the public in the regular public editions of the newspapers of complainant's members.

Complainant does not assert any rights under a statute or the copyright laws. It is not contended that the defendant procured the questioned information through a breach of contract between complainant and its member newspapers or through some surreptitious or dishonest conduct or from a private or confidential source before the news reports were published and distributed to the public in a member newspaper. The bill charges unfair competition by the defendant and in its brief complainant argues, in addition to that charge, that it has a property right in the news items in question and that such property rights have been and are being violated by the defendant. In the argument

before the court, counsel for complainant stressed its claim of unfair competition rather than its asserted property rights in the news reports. Complainant claims it has such property right in the news reports for at least twenty-four hours after first publication thereof in one of the newspapers of complainant's members, but that defendant has customarily broadcast the reports many hours before the expiration of such twenty-four hour period.

As upholding such property right, complainant cites The Associated Press v. Sioux Falls Broadcast Association, decided by Judge Jas. D. Elliott of the United States District Court of South Dakota at Sioux Falls, on March 4, 1933, being cause No. 377 S.D. Eq., and International News Service v. Associated Press, 248 U.S. 215. Complainant insists that the South Dakota case, upholding complainant's alleged property rights, is supported by the authority of the International News Service case. A certified copy of the findings and conclusions of the South Dakota case supplied to this court by complainant, discloses that Judge Elliott ruled that complainant and its members have "what a court of equity will treat as a property right in news gathered and disseminated by complainant and also so called local news gathered by members of complainant and [244] which members of complainant are obligated to transmit to complainant," but a careful review of the International News Service case fails to disclose a statement by the Supreme Court to the effect that complainant in that case acquired or had an absolute property right as

such in news gathered by it and supplied to its other member newspapers for any time after distribution to the public, or indeed for any time whatever, either before or after such publication. There seems to be no room for question that the true construction of the rule of the majority decision in that case is confined to the actual holding on the particular facts there involved and that the case turns on the point that the pirating news agency was guilty of unfair competition, in view of the opinion of Jusice Pitney speaking for the majority, at page 241 (of 248 U.S.), as follows:

> "It is said that the elements of unfair competition are lacking because there is no attempt by defendant to palm off its goods as those of the complainant, characteristic of the most familiar, if not the most typical, cases of unfair competition. (Citing) But we cannot concede that the right to equitable relief is confined to that class of cases. In the present case the fraud upon complainant's rights is more direct and obvious. Regarding news matter as the mere material from which these two competing parties are endeavoring to make money, and treating it, therefore, as *quasi* property for the purposes of their business because they are both selling it as such, defendant's conduct differs from the ordinary case of unfair competition in trade principally in this that, instead of selling its own goods as those of complainant, it substitutes misappropriation in the place of

misrepresentation, and sells complainant's goods as its own."

At page 240 Justice Pitney says further:

> "But in a court of equity, where the question is one of unfair competition, if that which complainant has acquired fairly at substantial cost may be sold fairly at substantial profit, a competitor who is misappropriating it for the purpose of disposing of it to his own profit and to the disadvantage of complainant cannot be heard to say that it is too fugitive or evanescent to be regarded as property. It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience."

Thus, the most that can be said of the majority rule in that case is that the majority reasons on an issue of unfair competition between news agencies in business for profit, that the complainant, whose labor and facilities have developed the news report up to the point at which the profit could first be realized, might be said to have a *quasi* property in the news [245] reports gathered by it for the purposes of its business as against the unfairly competing news agency, and that on such an issue of unfair competition in business a pirating "competitor who is misappropriating such news for the purpose of disposing of it to his own benefit and to the disadvantage of complainant cannot be heard to say that it is too fugitive or evanescent to be regarded as property." By fair construction, it is

not thought that a majority of the court in the cited case meant to hold that in all cases, for all purposes, the complainant there had an absolute property right in the news reports, and this court is of the opinion that, as against this defendant radio station, the complainant here has no property right for any time whatever in the questioned news reports after they are published.

On the question of unfair competition, the International News Service case is not controlling here, because the rule of that case is confined to the peculiar facts there involved and they are unlike the facts here. In that case a majority of the court held there was unfair competition between plaintiff and defendant, both of whom were news agencies engaged for profit in gathering and distributing news reports to their respective contract members. In the case at bar, the defendant is not in any way pirating the news reports furnished by the complainant for the purpose of selling them or distributing them for profit to radio news broadcasters or other news publishers. The fact that in so far as disseminating news is concerned the defendant radio station may be performing a service similar to that of member newspapers of the complainant, does not necessarily of itself constitute the defendant a competitor even of a member newspaper of the complainant, because the member newspaper d i s s e m i n a t e s news for profit through sale of newspapers, while the defendant radio station receives no compensation for dissemi-

nating news to the public, but does so free of charge therefor. Complainant contends that the news broadcast service is maintained by defendant radio station in order to make its time allocated to advertising service more valuable to advertisers through building up a broader field for effective advertising; and that, [246] similarly, the field of effective advertising through complainant's member newspapers is broadened by extending the field of newspaper distribution. A newspaper publisher gets paid not only for the advertising space in his newspaper purchased by advertisers, but also for each particular copy of his newspaper distributed to the public. The defendant radio station is not, therefore, directly in competition with complainant's member newspapers in respect to the business of disseminating news for profit. The mere fact that the defendand radio station competes for business profit with complainant's member newspapers in the advertising field does not make of the defendant and such newspapers competitors for business profits in the dissemination of news. Nor can it rightly be said that the taking or pirating be defendant, from complainant's members' newspaper issues regularly distributed and dedicated to the information of the public, of news reports and the broadcasting by defendant of such reports over its station to its radio listeners without compensation or direct profit therefor, constitute unfair competition by defendant with the business of news gathering and dissemination for profit by complainant or its member newspapers. In this connection it is pertinent

to note the language of the majority opinion in the International News Service case, at Pages 239-240 of the report of that case, as follows:

> "The right of the purchaser of a single newspaper to spread knowledge of its contents gratuitously for any legitimate purpose not unreasonably interfering with complainant's right to make merchandise of it, may be admitted; but to transmit that news for commercial use in competition with complainant—which is what defendant has done and seeks to justify—is a very different matter. * * * * Stripped of all disguise the process amounts to an unauthorized interference with the normal operation of complainant's legitimate business precisely at the point where the profit is to be reaped in order to divert a material portion of the profit from those who have earned it to those who have not; with special advantage to defendant in the competition because of the fact that it is not burdened with any part of the expense of gathering the news. The transaction speaks for itself and a court of equity ought not to hesitate long in characterizing it as unfair competition in business."

But as above pointed out, defendant here disseminates the questioned news reports to its listeners gratuitiously and without profit and for that reason complainant's case against the [247] defendant on the facts here must, insofar as the same is based on the rule of the cited case, fail. The rule of the

majority of the Supreme Court in the cited case relied upon by complainant, does not, on the question of unfair competition, apply to the facts in the case at bar.

Complainant also brings forth in its behalf the case of the Associated Press v. Sioux Falls Broadcast Association, decided by Judge Jas. D. Elliott of the United States District Court of South Dakota at Sioux Falls, on March 4, 1933, being cause No. 377, S.D. Eq. This court has not had access to the opinion of Judge Elliott in that case, but from a certified copy of the findings and conclusions in the case it appears that the facts involved in it are substantially on all fours with the facts in the case at bar. It is argued that Judge Elliott considered the rule of International News Service v. Associated Press, supra, applicable and controlling in the case before him, but, if Judge Elliott entertained that view, this court finds itself respectfully unable to concur in Judge Elliott's interpretation and application of the law.

Complainant has cited other authorities reviewed by the court, but, without mentioning them all, it seems that the more important of them involve unlicensed use by the defendants of market or trade quotations or trade information compiled through special skill or inventive labor, and generally distributed not to the public at large, but only under contract to trade members. In the case at bar, no special skill or inventive labor is involved.

The case of Tribune Co. v. Associated Press, 116 Fed. 126; the dissenting opinions of Justices

Holmes and Brandeis in International News Service v. Associated Press, supra; the opinion of Circuit Judge L. Haid in Cneney Bros. v. Doris Silk Corporation, 35 F. (2d) 279; and the reasoning of the court in the German case reviewed in Journal of Air Law, 1931, Vol. II, page 63, all announced principles more clearly applicable to the facts here involved.

Complainant, on page 26 of its brief, cites the Communications Act of 1934, Title 47 U.S. Code Anno., Sec. 605. 1934 Cumulative Annual Pocket Part, and quotes therefrom as follows: [248]

> "And no person, not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purported effect or meaning of such intercepted communication to any person; and no person, not being entitled thereto, shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained, for his own benefit or for the benefit of others not entitled thereto;"

and complainant argues that the German case cited by defendant, which refused to protect a radio broadcaster from pirating of its news by a newspaper, could not apply to the case at bar by reason of the provisions of the cited Communications Act; but that statute specifically applies only to communications by wire or radio and does not apply to communications published in a newspaper. The

German case, therefore, holding that the radio broadcaster has no right in news which can be protected after the news has been broadcast by radio to the public, may at least be said to indicate the modern trend and to point out the policy of a leading European country in protecting the public interest in news and in denying private business claims thereto from the moment the news is first dedicated to the use of the public, and, insofar as the principles announced therein apply to similar acts not controlled by specific law or authority, the German case is worthy of appropriate consideration here in the absence of other controlling authority to the contrary. The facts in that case are more nearly analogous to the facts in the case at bar than are those stated in any other cited case except the South Dakota case.

This court holds that when general news furnished by complainant, or local news claimed to be under its control as regards republication, has been printed in a regular issue of complainant's member newspapers and that issue has been, in the ordinary course, published and distributed to the public, such news reports from that moment belong to the public, including the defendant and all others who may desire to use them, for all purposes except for sale by a rival news agency to its news publishing members, and that the mere fact that defendant disseminated gratuitously those news reports as a part of its radio service after they have been so received by defendant contemporaneously with other mem-

bers of the public, does not prevent defendant from so receiving and using such news [249] reports, since such practice by defendant does not involve the pirating by one news gathering and distributing agency of news reports of another such agency, as was the case in International News Service v. Associated Press, supra.

Another very important phase of this case is that disclosing the everlasting conflict between private enterprise and public interest. The case occasions restatement of the principle that improved instrumentalities for the advancement of social progress and public convenience, including agencies for improved free speech and free press, must not be discarded for the sake of private enterprise, unless such hindrance of the public interest be required by positive law or clear contract. To refuse the interpretation of its rights desired by complainant may as contended result in incidental financial loss to it, but, in the absence of law or contract, it is in this situation for Congress alone to abridge the public interest in favor of complainant's private enterprise; but Congress so far, even after giving the subject specific consideration in the past, has failed to take any action in the premises.

The relative positions of complainant and defendant in the communication of news may be better understood by recalling to view the history of the important phases of our developement in the fields of transportation and communication. In the earli-

est period of our country's history communication of private dispatches and public news was by individual courier on foot or, like Paul Revere, on horseback. Later came the stage coach with the mails, always pressing onward to new frontiers. Next, the locomotive, or as originally known, the "iron horse", developed the mail express, soon however yielding a portion of its communications business to the telegraph and telephone, and later yielding much of its business to its present aggressive competitors, the motor bus, motor truck and airplane. In many instances, electric street railways have been forced out of business by the more convenient and efficient motor bus.

These improvements and developments have occurred in the field of news communication as well as in transportation, and have facilitated and have been indispensible to the [250] march of progress in which the public has been most vitally interested, and, in respect to them, the protection of private investment has had to yield to the convenience of the public. A fair construction of the true situation in the case at bar is that it involves an exemplification of the greater efficiency of modern news dissemination instrumentalities as compared with those of by-gone days, which, in those days, adequately served alike private enterprise and public interest. Complainant's and its newspaper member's facilities are not likely to pass into disuse as some news communication instrumentalities

have in the past, but the service which complainant's facilities have rendered to the past or may render to the future cannot be employed to hinder the use of more modern means, including those of the defendant radio station, which, in some respects, surpass conplainant's facilities to an extent comparable to the advantages of the airplane over those of the railroad train.

Accordingly, the proper protection of complainant's business, news service contracts and invested capital cannot justify withholding from the public the more speedy and more extensive dissemination of news through the improved instrumentalities of defendant radio station and others similarly situated, even when news reports broadcast by defendant or others gratuitously to their radio listeners have been taken from sources originated or controlled by complainant, if the reports have already been dedicated to the information of the public in a publicly distributed issue of complainant's member newspaper, unless such dissemination is in violation of some clear contract between complainant and defendant or complainant's member newspapers, or in violation of some positive law or well defined general rule of conduct. This court is advised of no such positive law, contract or rule of conduct, applicable to the facts here; and upon the foregoing considerations of fact and law the court concludes that the bill states no cause of

action in equity nor any facts entitling complainant to injunctive relief now sought. [251]

The temporary restraining order will be dissolved, the defendant must be discharged from the show cause order, and the temporary injunction will be denied. As in the court's view the bill cannot in any event succeed, it must be dismissed. Counsel may propose appropriate form of order.

JOHN C. BOWEN,
United States District Judge.

[Endorsed]: Filed Dec. 18. 1934. [252]

[Title of Court and Cause.]

REQUEST BY COMPLAINANT FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The Associated Press, a corporation, complainant in the above entitled action, respectfully requests the court that, in rendering and making its order in the above entitled cause, in connection with complainant's prayer for a preliminary or temporary injunction herein, the court make specific findings of fact and conclusions of law upon the issues raised by complainant's application for a temporary injunction, such findings of fact and conclusions of law to be as herewith submitted.

DATED this 19th day of January, 1935.

HOWARD & KINDALL
Attorney for Complainant. [253]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW PROPOSED BY COMPLAINANT

This cause came on regularly for hearing before the Hon. John C. Bowen, one of the judges of the above entitled court, at the court room in the United States Post Office Building in the City of Seattle, Washington, on Monday, December ....., 1934, upon the application of the complainant for a preliminary injunction and upon defendant's motion to dismiss the action. Complainant appeared by J. W. Kindall, its attorney, and defendant appeared by Kenneth C. Davis and William H. Pemberton, its attorneys. Having listened to the arguments of counsel and having examined the affidavits on file herein and the entire records and files herein, and having taken the matter under advisement, the court filed herein under date of December 18, 1934, its memorandum decision to the effect that the temporary restraining order heretofore entered herein should be dissolved, that the temporary or preliminary injunction should be denied, and that the defendant's motion to dismiss the action should be granted.

NOW, THEREFORE, the court makes and enters the following: [254]

FINDINGS OF FACT

1.

Complainant now is, and at all times mentioned herein has been, a corporation and a resident and

citizen of the State of New York, and is not a resident or citizen of the State of Washington. Defendant now is, and at all times mentioned herein has been, a corporation and a resident and citizen of the State of Washington, having its principal place of business at Bellingham, in Whatcom County, Washington, in the Northern Division of the Western District of Washington, and is not now, nor at any time herein mentioned has it been, a resident or citizen of the State of New York. The amount in controversy herein is in excess of $3,000.00, exclusive of interest and costs.

2.

Complainant was incorporated in 1900 under the Membership Corporations Law of the State of New York. Its members are more than 1,200 in number, and each is the proprietor or representative of a morning or evening newspaper published in the United States. Ever since its organization, and in accordance with the powers granted by its Certificate of Incorporation, and pursuant to its by-laws duly enacted, complainant has been and still is engaged in gathering from sources all over the world, by means of its own instrumentalities, by exchange with its members, and by other appropriate means, any and all kinds of information, news and intelligence, telegraphic or otherwise, for the use and benefit of its members. Complainant distributes the same among its members for publication in the newspapers owned or represented [255] by them,

subject to the provisions of complainant's by-laws. Complainant has its own representatives in every important city in the world and has reciprocal arrangements with many important news agencies in foreign countries for interchange of news. As required by complainant's by-laws, each member supplies to complainant local news gathered by such member. Such news is promptly transmitted by wire or telephone to complainant's members and their newspapers. Complainant is thus able to assure to its members prompt collection and transmission of news from every point in the world. Complainant incurs great cost in collecting local and foreign news and interchanging news with other news agencies, such cost amounting each year to many millions of dollars, which is divided among complainant's members, in accordance with its by-laws.

3.

The service of complainant is of great financial and business importance to its members because it is practically impossible for any one of them alone to establish or maintain the organization requisite for collecting all of the news of the world, or any substantial part thereof. Aside from the administrative and organization difficulties thereof, the financial cost is so great that no single newspaper acting alone could sustain it. Complainant's service, or a similar service, of world-wide collection of news is essential to the conducting of modern daily newspapers and can be obtained only by some such

cooperative organization or system or by purchase of news from some one or more of various existing news agencies which are privately owned. Aside from the business importance of the service to members of complainant corporation, and newspapers represented by them, the service of complainant, conducted as [256] aforesaid, is of great public importance in that it provides an issuance of accurate and impartial news service to the public.

4.

The value of the news service thus furnished by complainant to its members largely depends upon the promptness of such service and the accuracy and impartiality of such news, and also upon the requirement that the news of the day shall be transmitted by complainant to its members earlier than such information can be furnished to other competing newspapers, and that such news or information collected by complainant shall not be furnished to other newspapers which are not represented by members of The Associated Press and do not contribute to the expense of gathering such news. An essential part of such plan of operation of complainant accordingly is that news collected by it shall remain confidential and secret until its publication has been fully accomplished by all of complainant's members, for the reason that otherwise competing newspapers and other competing news agencies, which bear no part of the cost, would unfairly and inequitably receive the benefit of such service, and such a result would ultimately

greatly impair the usefulness of complainant to its members and imperil its existence. Accordingly, the by-laws of complainant, to which each of its members agree upon assuming membership, provide that news received through complainant's service is received exclusively for the purpose of publication in the specific newspaper, language and place specified in the member's Certificate, and that the members shall permit no other use to be made of it whatever, and also that no member shall furnish or permit anyone in his employ, or connected with the news- [257] paper specified in the said Certificate, to furnish any of complainant's news in advance of publication to any person who is not a member, or to furnish even to another member, any news received from complainant which complainant itself is debarred from furnishing to such member, or to conduct his business in such manner that the news furnished by complainant may be communicated to any person, firm, corporation or association not entitled to receive the same; or to furnish or permit anyone else to furnish to anyone outside of the membership of complainant any of the news which he is required by the said by-laws to supply to the complainant, including the local news gathered by each member. As to such local news, complainant, under the reciprocal arrangements hereinbefore described, is entitled, exclusively of other news gathering agencies or disseminating organizations or agencies, to receive said local news for transmission to members

of complainant. Said local news is of great value to complainant in that its dissemination to members of complainant is part of the service rendered by complainant, and constitutes complainant's method of obtaining and disseminating news which arises in the territory served by the representative newspapers.

5.

Defendant conducts a radio station in the City of Bellingham, Washington, and makes daily broadcasts from 7 o'clock a.m. to 11 o'clock p.m. of programs of the kind commonly given by radio broadcasting stations. As a part of its daily programs, defendant conducts three news broadcasts, commonly called "Newspaper of the Air." The first is from 9:15 to 9:45 o'clock a. m. daily, the second from 12:15 to 12:45 o'clock noon, and the third is from 7 to 7:45 o'clock in the evening. Defendant announces to [258] the public, and the fact usually is, that its news broadcasts comprise the reading of the most important and most interesting news events of the day.

6.

Three of complainant's member newspapers, to-wit: the Bellingham Herald, published at Bellingham, Washington, the Seattle Post-Intelligencer and the Seattle Daily Times, both of Seattle, Washington (about 93 miles distant from Bellingham), publish and distribute daily newspapers, including news furnished and controlled by complainant, in the

territory served by defendant's radio broadcasting station. For its daily morning broadcast from 9:15 to 9:45 o'clock, defendant obtains copies of the morning editions of the Bellingham Herald and Seattle Post-Intelligencer, and systematically reads therefrom the whole or most important paragraphs or parts, sometimes verbatim and sometimes slightly rearranging the wording, of the most important and most interesting news items in those newspapers, including the news items furnished to such newspapers by complainant and items gathered by its member newspapers as local news and belonging to complainant. For its daily evening broadcast, except Sunday, from 7 to 7:45 o'clock, defendant regularly obtains copies of the latest editions of the Bellingham Herald, evening edition, and the Seattle Daily Times, and systematically reads therefrom complainant's news items. The morning edition of the Bellingham Herald, so used by defendant, includes all the news furnished by complainant up to approximately 3:30 o'clock a. m. The morning edition of the Seattle Post-Intelligencer, so used by defendant, includes all of the news furnished by complainant to it up until [239] 11:30 o'clock in the evening of the day before. The evening edition of the Bellingham Herald, so used by defendant, includes all of the news furnished by complainant to it up to 4 o'clock of the afternoon of each day. The evening edition of The Seattle Daily Times, so used by defendant, includes all of the news furnished by complainant to it up to 10

o'clock in the forenoon of the day it is published. Each one of these newspapers labels local news items as "local news", which are owned and controlled by complainant.

7.

In publishing such news items, defendant is in competition with the three newspapers. Defendant conducts the news broadcasts as a part of its business of operating its radio station. Its radio station is a business enterprise conducted for profit, the profit being derived from sale of time over its radio station for advertising purposes to persons, firms and corporations desiring to advertise their businesses or products and desiring to purchase time from defendant radio station in which to advertise and promote their businesses or products. The value of such time for advertising purposes of defendant's radio station depends practically entirely upon the popularity of its station, that is, upon the number of persons who usually listen to defendant's radio programs. The object and purpose of the radio news broadcasts over the defendant's station is to popularize its station by making its programs interesting through news broadcasts and thereby inducing a greater number of persons to listen to defendant's programs, whereby the value of time over defendant's broadcasting [260] station for advertising purposes is enhanced. According to the schedule of rates filed by defendant with the proper authorities at Washington, D. C.,

defendant's charge for such advertising during the course of news broadcasts is higher than when advertising is broadcast during the course of other programs.

8.

The major portion of revenue derived by complainant's newspaper members is derived from the sale of space in those newspapers for advertising purposes. The value of such newspaper advertising space depends largely upon the number of readers of the newspapers, and the number of such readers depends practically entirely upon the freshness and interest of the news, intelligence and information contained in the newspapers. News ceases to be fresh and interesting after it has become generally known and the "news value" of such news is practically destroyed as soon as, or shortly after, it becomes generally known. By virtue of the matters aforesaid, defendant has become and is a competitor of complainant and its newspaper members in the obtaining and distribution of news, and such competition necessarily involves rivalry and business competition in being the first to obtain and distribute such news for the purpose of popularizing and making more attractive the respective advertising mediums of the defendant's radio station and complainant and its newspaper members.

9.

Defendant has certain means of its own for securing news, and complainant does not object to or

complain because of the use by defendant of news gathered through its own channels. But [261] complainant does object and complain because, and the court finds the fact to be, the defendant regularly and continuously follows the practice of reading and "pirating" the news, intelligence and information gathered and written at great expense by complainant and its members.

10.

The territory served by defendant's radio station extends for a radius of seventy-five to one hundred miles from the City of Bellingham, depending upon conditions affecting radio broadcasting. A large portion, approximately sixty per cent, of the persons residing within the territory either own radios or have access to radios, and are actual or potential readers and subscribers of the various newspapers published by members of complainant corporation. Said newspapers serve the same territory and are distributed by the United States mail, carrier service maintained by individual newspapers, and other means of distribution. The circulation and distribution of said newspapers through said territory is almost entirely by means of railroad or motor transportation. As to all points outside of the city where each newspaper is published, a period of from not less than two (2) or three (3) hours up to twenty-four (24) hours or more necessarily elapses from publication to delivery to the readers and subscribers thereof.

11.

Through the practice of "pirating" news and broadcasting the same, as herein set forth, defendant regularly appropriates news which has been gathered at great expense by complainant, and to which complainant's members are entitled. Defendant makes said news known to the general public throughout the territory [262] served by its radio broadcasts several hours in advance of the time when newspapers published by members of complainant corporation can reach actual or potential subscribers thereof. Thereby, and by such practice, defendant, for its own profit and for the enhancement of its own business, in effect, appropriates the products of the efforts and industry of complainant and members of complainant corporation. By said practice of making said news generally known to the public in said territory before said newspapers can be distributed among the public, said news is, to a large extent, rendered old, stale and uninteresting, and no longer news, and said practice greatly impairs and detract from the attractiveness of said newspapers.

12.

The practices of defendant deprive complainant and its members of the benefits of their labors and expenditures, and have caused dissatisfaction among complainant's newspaper members, due to the fact that defendant is thus enabled to spread and disseminate throughout the territory served by its station, in advance of dissemination by com-

plainant's members, the same identical news which is paid for and obtained by the members from complainant, as well as "local news" gathered by complainant's members and belonging to complainant. If defendant's broadcasts be continued, complainant's efforts and expenditures to gather and obtain news will be rendered largely without reward or value so far as concerns the territory served by defendant radio station, which is substantially the same territory served by complainant's members from which the news so broadcast was taken by defendant. [263]

13.

Complainant has made frequent requests and demands of defendant that defendant desist from said practice of so "pirating" the news. Defendant has uniformly refused to desist from its practice, but proposes to continue with the same, and, in fact, does intend to continue the aforesaid practice, and will do so unless restrained from so doing. The defendant does not have, and has never had, the permission of the complainant, or any member of complainant corporation, to make use of said news gathered by complainant and its members.

DONE IN OPEN COURT this .....day of....., 1935.

JOHN C. BOWEN
United States District Judge.

The foregoing Findings of Fact which are proposed by complainant are hereby rejected by Court. Complainant is allowed an exception to the Court's

ruling as applied to each and all of such rejected Findings of Fact.

Dated this 28th day of January, 1935.

JOHN C. BOWEN,
U. S. District Judge.

Copy received.

KENNETH C. DAVIS
Attorney for Defendant. [264]

[Title of Court and Cause.]

CONCLUSIONS OF LAW AS PROPOSED BY COMPLAINANT.

Based upon the Findings of Fact heretofore entered herein, the complainant proposes that the Court make the following:

CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties and the subject matter herein, there being the necessary diverse citizenship between complainant and defendant and there being more than $3,000.00, exclusive of interest and costs, in controversy herein.

2. Complainant is a proper party to prosecute this action in its own behalf and on behalf of its members.

3. As between complainant and defendant, complainant has a right, in the nature of a property right, in its news as against the use thereof by defendant until sufficient time has elapsed to enable complainant's members to complete the distribution of their newspapers in the territory served by them.

4. Defendant's acts as set forth in the bill of complaint and in the foregoing findings of fact constitute unfair [265] competition as against complainant and its members, and the bill of complaint herein states a good cause of action entitling complainant to the relief prayed for therein.

5. From the affidavits, records and files herein, it appears that complainant and complainant's members are suffering irreparable damage and injury by defendant's practices.

6. Complainant has no adequate, speedy or complete remedy at law, and no good cause has been shown why the court should not grant a preliminary injunction herein.

7. Defendant's motion to dismiss should be denied and complainant's application for a temporary or preliminary injunction should be granted as prayed for.

DONE IN OPEN COURT this .....day of....., 1935.

.....

United States District Judge.

The foregoing Conclusions of Law, Nos. 3, 4, 5, 6 and 7 which are proposed by complainant, are hereby rejected by the court. Complainant is allowed an exception to the court's ruling as applied to each and all of such rejected conclusions.

DATED this 28th day of January, 1935.

JOHN C. BOWEN
United States District Judge.

[Endorsed]: Filed Jan 28, 1935. [266]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for hearing before the Hon. John C. Bowen, one of the judges of the above entitled court, at the court room in the United States Post Office Building in the City of Seattle, Washington, on Monday, December 3rd, 1934, upon the application of the complainant for a preliminary injunction and upon defendant's motion to dismiss the action. Complainant appeared by J. W. Kindall, its attorney, and defendant appeared by Kenneth C. Davis and William H. Pemberton, its attorneys. Having listened to the arguments of counsel and having examined the affidavits on file herein and the entire records and files herein, and having taken the matter under advisement, the court filed herein under date of December 18, 1934, its memorandum decision to the effect that the temporary restraining order heretofore entered herein should be dissolved, that the temporary or preliminary injunction should be denied, and that the defendant's motion to dismiss the action should be granted.

NOW, THEREFORE, the court makes and enters the following:

FINDINGS OF FACT

1.

Complainant now is, and at all times mentioned herein has been, a corporation, and a resident and

citizen of the State of New York, and is not a resident or citizen of the State of Washington. Defendant now is, and at all times mentioned herein has been, [267] a corporation and a resident and citizen of the State of Washington, having its principal place of business at Bellingham, in Whatcom County, Washington, in the Northern Division of the Western District of Washington, and is not now, nor at any time herein mentioned has it been, a resident or citizen of the State of New York. The amount in controversy herein, by reason of defendant's motion to dismiss, must be construed to be in excess of $3,000.00, exclusive of interest and costs.

2.

Complainant was incorporated in 1900 under the Membership Corporations Law of the State of New York, and its members are more than 1,200 in number. Complainant has been and still is engaged in gathering any and all kinds of information, news and intelligence, telegraphic or otherwise, for the use and benefit of its members. Complainant distributes the same among its member for publication in the newspapers owned or represented by them, and the cost of collecting local and foreign news and interchanging news with other news agencies, is divided among complainant's members, in accordance with its asserted by-laws.

3.

Defendant conducts a radio station in the City of Bellingham, Washington, and makes daily broad-

casts from 7 o'clock a. m. to 11 o'clock p. m. of various kinds of programs. As a part of its daily programs, defendant gratuitously broadcasts to the public three news broadcasts, commonly called "Newspaper of the Air." The first is from 9:15 to 9:45 o'clock a. m. daily, the second from 12:15 to 12:45 o'clock noon, and the third is from 7 to 7:45 o'clock in the evening.

4.

Three of complainant's member newspapers, to-wit: the Bellingham Herald, published at Bellingham, Washington, the Seattle Post Intelligencer and the Seattle Daily Times, both of Seattle, [268] Washington (about 93 miles distant from Bellingham), publish and distribute daily newspapers, including news furnished and controlled by complainant, the latter two only partly serving the territory served by defendant's radio broadcasting station.

5.

The territory served by defendant's radio station of 100 watts, depends upon conditions affecting radio broadcasting. Said newspapers serve the same territory, although the Seattle Times and the Seattle Post-Intelligencer only partly serve this territory, and are distributed by the United States mails, carrier service maintained by individual newspapers, and other means of distribution.

6.

That, while the defendant does not regularly appropriate news which has been gathered at great

expense by complainant, and to which complainant's members are entitled, defendant has in some specific instances used and taken local and general news dispatches as charged by complainant, but not until after such news items were published and distributed to the public in the regular public editions of the newspapers of complainant's members; that the defendant did not secure, in these specific instances, these news items through surreptitious or dishonest means, or through a breach of contract, or from a private or of a confidential source before these news items were published and distributed to the public, nor does the complainant assert any right exists in these news items after such publication by reason of any statute of the United States, or of any State, or by virtue of the Copyright Laws.

7.

That defendant, with the exception of some specific instances, obtains the general news reports used in such radio news broadcasts, from the Radio News Association of New York City, which are broadcast from New York to defendant, by short waive length, three [269] or more times daily, from 6 to 7 o'clock a. m., 9:30 to 10:30 a. m., 2 to 3 p. m., and 5:30 to 6 p. m., Pacific Standard Time; that defendant, with the exception of some specific instances, obtains its local news items by its own reportorial staff, although, in no instance, has the defendant ever taken or pirated any of the news claimed by complainants or its members, before

such news items were published and distributed to the public in the regular public editions of the newspapers of complainant's members.

8.

That the defendant does not sell or distribute news reports to radio news broadcasters or to other news publishers, nor did the defendant, in the specific instances of appropriation of complainant's news, ever derive any profit, either direct or nominal, therefrom; that the defendant receives no compensation at all for disseminating such news to the public, but renders this particular service to the public free of charge; that defendant and complainant's members compete for profit in the advertising field, but competition does not exist in the dissemination of news between any of said parties; that the acts of defendant, in the specific instances of using some of the news items as aforesaid from complainant's member newspapers, after their issues have been regularly distributed and dedicated to the information of the public, does not constitute unfair competition by defendant with the business of complainant and its members in news gathering and dissemination of such news for profit.

9.

That the defendant has not interfered with the complainant's alleged property right in any of said news items nor has defendant interfered with the

normal operation of complainant's business, nor has defendant diverted any of complainant's profits in the normal operation of its business in any manner whatsoever. [270]

10.

That the news items involved had been printed in the regular issues of complainant's member newspapers and these issues had been, in the ordinary course, published and distributed to the public, and such news items and reports from that moment belonged to the public, including the defendant and all others who desire to use them for informative purposes, and for all purposes except for sale by a rival news gathering agency, which defendant is not, and that defendant never broadcast or disseminated any of these news items until after they had been so received by defendant contemporaneously with other members of the public, and then defendant broadcast them free of charge to the general public as an informative and public service, and defendant has not been guilty of unfair competition or bad faith, and the facts herein, does not involve the pirating by one news gathering and distributing agency of news reports of another such agency.

11.

That the defendant did not have the permission of complainant to use any of its news items and had

been requested by complainant to refrain from so doing.

12.

That the acts of defendant did not violate any contract, positive law, copyright law, nor infringed any rights of complainants or its members, or breach any confidential or private source of information, and were entirely within and performed on behalf of the general public interest. To all of which and the foregoing the complainant excepts and said exceptions are allowed.

DONE IN OPEN COURT this 28th day of January, 1935.

JOHN C. BOWEN
United States District Judge [271]

From the foregoing Findings of Fact the court deduces, makes and enters the following

CONCLUSIONS OF LAW

1.

That the court has jurisdiction over the parties and the subject matter herein since defendant's motion to dismiss admits for the purpose of pleading all facts well pleaded in the bill of complaint and particularly the necessary diverse citizenship between complainant and defendant and the allegation that there is involved in the controversy herein more than $3,000.00 exclusive of interest and costs.

2.

That the complainant is a proper party to prose-

cute this action on its own behalf and on behalf of its members.

3.

Defendant's acts as set forth in the bill of complaint and in the affidavits filed herein and in the foregoing findings of fact do not constitute unfair competition as against complainant or any of its members, and do not violate any of the property rights of complainant or any of its members, and the bill of complaint does not state facts sufficient to constitute a cause of action against the defendant.

4.

That the temporary restraining order herein heretofore granted complainant, should be dissolved and the defendant should be discharged from the show cause order heretofore issued herein, and the temporary injunction prayed for should be denied.

5.

That the bill of complaint states no cause of action in equity nor any facts entitling complaint to the injunctive relief now sought nor any relief prayed for in the bill of complaint, and [272] defendant's motion to dismiss complainant's bill of complaint should be sustained and the bill of complaint should be dismissed with prejudice, and defendant should be allowed its costs herein against complainant.

To all of the foregoing complainant excepts and its exceptions are hereby allowed.

DONE IN OPEN COURT this 28th day of January, 1935.

JOHN C. BOWEN
United States District Judge

Approved as to form

Presented by:

KENNETH C. DAVIS
Of Counsel for Defendant

[Endorsed]: Filed Jan 28 1935 [273]

United States District Court, Western District of Washington, Northern Division

IN EQUITY—NO. 1087

THE ASSOCIATED PRESS, a corporation,
Complainant,

vs.

KVOS, INC., a corporation,
Defendant.

DECREE OF DISMISSAL

This cause having come on to be heard at this term on the motion of KVOS, Inc., a corporation, defendant in the above entitled action, to dismiss the bill of complaint herein on the grounds, among others, that the bill of complaint does not recite facts sufficient to entitle complainant to the relief

prayed for and is without equity, and upon the show cause order herein requiring defendant to show cause why a temporary injunction pendente lite should not be granted, and upon the briefs of counsel for the respective parties, and the cause having been argued before the court and the court having taken the matter under advisement and having heretofore on December 18, 1934, filed its memorandum decision herein in writing, and the court having heretofore made and entered herein its findings of fact and conclusions of law, and being now fully advised in the premises; now, therefore, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. That the temporary restraining order heretofore granted to complainant herein be and the same is hereby dissolved and defendant is hereby discharged from the show cause order heretofore issued herein.

2. That the complainant's application for a [274] temporary injunction be and the same hereby is denied.

3. That the defendant's acts as set forth in the bill of complaint and in the affidavits and in the findings of fact herein, do not constitute unfair competition as against complainant or any of its members and do not violate any property rights of complainant or any of its members, and the bill of complaint states no cause of action in equity nor any facts entitling complainant to the injunc-

tive relief or any relief sought against defendant, and the defendant's motion to dismiss complainant's bill of complaint is hereby granted and the bill of complaint and the above entitled cause of action are hereby dismissed with prejudice and the defendant is hereby granted its costs against complainant, to be taxed by the clerk of this court.

4. To all of the foregoing complainant excepts and its exceptions are hereby allowed.

DONE IN OPEN COURT at Seattle this 28th day of January, 1935.

JOHN C. BOWEN
United States District Judge.

[Endorsed]: Filed Jan. 28, 1935 [275]

[Title of Court and Cause.]

PETITION FOR APPEAL

To the Honorable John C. Bowen, United States District Judge:

The Associated Press, a corporation, feeling itself aggrieved by the decree rendered and entered in the above entitled cause on the 28th day of January, 1935, wherein and whereby the bill of complaint herein was dismissed, and wherein and whereby an order of said Court was entered denying complainant's application for a preliminary or temporary injunction, does hereby appeal from said

decree of dismissal and from said order denying said preliminary or temporary injunction, to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons and upon the grounds specified in the Assignment of Errors, which is filed herewith. Complainant prays that this appeal from said decree of dismissal and from said order denying complainant's application for a preliminary or temporary injunction be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said decree and others were based, duly authenticated, may be sent to the United States Circuit [276] Court of Appeals for the Ninth Circuit within the time and in the manner provided by law and agreeable to the rules promulgated by said Court.

Your petitioner further prays that a proper order be made touching the security to be required of it to perfect its appeal.

C. W. HOWARD
J. W. KINDALL
Solicitors for Complainant.
Address: Bellingham, Washington.

The foregoing petition is hereby granted and the appeal from said order denying complainant's application for a preliminary or temporary injunction and also the appeal from said decree dismissing complainant's bill of complaint are each allowed, all upon complainant's giving bond conditioned as re-

quired by law in the sum of One Thousand ($1,000) Dollars.

DONE IN OPEN COURT this 25th day of February, 1935.

JOHN C. BOWEN
United States District Judge

Received a copy of the foregoing Petition for Appeal and of the foregoing Order allowing appeals on this 25th day of February, 1935.

KENNETH C. DAVIS
CLARENCE C. DILL
Solicitors for Defendant and Appellee [277]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the complainant in the above entitled action and makes and files the following Assignment of Errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the order denying complainant's application for temporary injunction and from the decree of dismissal therein made and entered on the 28th day of January, 1935:

I.

The Court erred in refusing to make Findings of Fact "3" proposed by complainant, which was as follows:

"The service of complainant is of great financial and business importance to its members

because it is practically impossible for any one of them alone to establish or maintain the organization requisite for collecting all of the news of the world, or any substantial part thereof. Aside from the administrative and organization difficulties thereof, the financial cost is so great that no single newspaper acting alone could sustain it. Complainant's service, or a similar service, of world-wide collection of news is essential to the conducting of modern daily newspapers and can be [278] obtain only by some such cooperative organization or system or by purchase of news from some one or more of various existing news agencies which are privately owned. Aside from the business importance of the service to members of complainant corporation, and newspapers represented by them, the service of complainant, conducted as aforesaid, is of great public importance in that it provides an issuance of accurate and impartial news service to the public."

for the reason that the facts contained in said proposed findings of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court.

II.

The Court erred in refusing to make Findings of

Fact "4" proposed by complainant, which was as follows:

> "The value of the news service thus furnished by complainant to its members largely depends upon the promptness of such service and the accuracy and impartiality of such news, and also upon the requirement that the news of the day shall be transmitted by complainant to its members earlier than such information can be furnished to other competing newspapers, and that such news or information collected by complainant shall not be furnished to other newspapers which are not represented by members of The Associated Press and do not contribute to the expense of gathering such news. An essential part of such plan of operation of complainant accordingly is [279] that news collected by it shall remain confidential and secret until its publication has been fully accomplished by all of complainant's members, for the reason that otherwise competing newspapers and other competing news agencies, which bear no part of the cost, would unfairly and inequitably receive the benefit of such service, and such a result would ultimately greatly impair the usefulness of complainant to its members and imperil its existence. Accordingly, the by-laws of complainant, to which each of its members agree upon assuming membership, provide that news received through complainant's service is received exclusively for the purpose of publica-

tion in the specific newspaper, language and place specified in the member's Certificate, and that the members shall permit no other use to be made of it whatever, and also that no member shall furnish or permit anyone in his employ, or connected with the newspaper specified in the said Certificate, to furnish any of complainant's news in advance of publication to any persons who is not a member, or to furnish even to another member, any news received from complainant which complainant itself is debarred from furnishing to such member, or to conduct his business in such manner that the news furuished by complainant may be communicated to any person, firm, corporation or association not entitled to receive the same; or to furnish or permit anyone else to furnish to anyone outside of the membership of complainant any of the news which he is required by the said by-laws to supply to the complainant, including [280] the local news gathered by each member. As to such local news, complainant, under the reciprocal arrangements hereinbefore described, is entitled, exclusively of other news gathering agencies or disseminating organizations or agencies, to receive said local news for transmission to members of complainant. Said local news is of great value to complainant in that its dissemination to members of complainant is part of the service rendered by complainant, and constitutes complainant's method of obtaining and disseminat-

ing news which arises in the territory served by the representative newspapers."

for the reason that the facts contained in said proposed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court.

II. (a)

The Court erred in refusing to make that part of Finding of Fact "5" proposed by complainant, which was as follows:

> "Defendant announces to the public, and the fact usually is, that its news broadcasts comprise the reading of the most important and most interesting news events of the day"

for the reason that the facts contained in said proposed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court.

II. (b)

The Court erred in refusing to make Finding of Fact "6" proposed by complainant, which was as follows:

> "Three of complainant's member newspapers, to-wit: the Bellingham Herald, published at Bellingham, Washington, the Seattle Post-Intelligencer and the Seattle Daily Times, both of

Seattle, Washingon (about 93 [281] miles distant from Bellingham), publish and distribute daily newspapers, including news furnished and controlled by complainant, in the territory served by defendant's radio broadcasting station. For its daily morning broadcast from 9:15 to 9:45 o'clock, defendant obtains copies of the morning editions of the Bellingham Herald and Seattle Post-Intelligencer, and systematically reads therefrom the whole or most important paragraphs or parts, sometimes verbatim and sometimes slightly rearranging the wording, of the most important and most interesting news items in those newspapers, including the news items furnished to such newspapers by complainant and items gathered by its member news papers as local news and belonging to complainant. For its daily evening broadcast except Sunday from 7 to 7:45 o'clock, defendant regularly obtains copies of the latest editions of the Bellingham Herald, evening edition, and the Seattle Daily Times, and systematically reads therefrom complainant's news items. The morning edition of the Bellingham Herald so used by defendant includes all the news furnished by complainant up to approximately 3:30 o'clock a.m. The morning edition of the Seattle Post-Intelligencer, so used by defendant, includes all of the news furnished by complainant to it up until 11:30 o'clock in the evening of the day before. The evening edi-

tion of the Bellingham Herald, so used by defendant, includes all of the news furnished by complainant to it up to 4 o'clock of the afternoon of each day. The evening edition of The Seattle Daily Times, so used by defendant, includes all of the news furnished by com- [282] plainant to it up to 10 o'clock in the forenoon of the day it is published. Each one of these newspapers labels local news items as 'local news', which are owned and controlled by complainant"

for the reason that the facts contained in said proposed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court.

III.

The Court erred in refusing to make Finding of Fact "7" proposed by complainant, which was as follows:

"In publishing such news items, defendant is in competition with the three newspapers. Defendant conducts the news broadcast as a part of its business of operating its radio station. Its radio station is a business enterprise conducted for profit, the profit being derived from sale of time over its radio station for advertising purposes to persons, firms and corporations desiring to advertise their businesses or products and desiring to purchase time from

defendant radio [283] station in which to advertise and promote their businesses or products. The value of such time for advertising purposes of defendant's radio station depends practically entirely upon the popularity of its station, that is, upon the number of persons who usually listen to defendant's radio programs. The object and purpose of the radio news broadcasts over the defendant's station is to popularize its station by making its programs interesting through news broadcasts and thereby inducing a greater number of persons to listen to defendant's programs, whereby the value of time over defendant's broadcasting station for advertising purposes is enhanced. According to the schedule of rates filed by defendant with the proper authorities at Washington, D. C., defendant's charge for such advertising during the course of news broadcasts is higher than when advertising is broadcast during the course of other programs."

for the reason that the facts contained in said proposed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court.

IV.

The Court erred in refusing to make Finding of Fact "8" proposed by complainant, which was as follows:

"The major portion of revenue derived by complainant's newspaper members is derived from the sale of space in those newspapers for advertising purposes. The value of [284] such newspaper advertising space depends largely upon the number of readers of the newspapers, and the number of such readers depends practically entirely upon the freshness and interest of the news, intelligence and information contained in the newspapers. News ceases to be fresh and interesting after it has become generally known and the "news value" of such news is practically destroyed as soon as, or shortly after, it becomes generally known. By virtue of the matters aforesaid, defendant has become and is a competitor of complainant and its newspaper members in the obtaining and distribution of news, and such competition necessarily involves rivalry and business competition in being the first to obtain and distribute such news for the purpose of popularizing and making more attractive the respective advertising mediums of the defendant's radio station and complainant and its newspaper members."

for the reason that the facts contained in said proposed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court.

V.

The Court erred in refusing to make Finding of Fact "10" proposed by complainant, which was as follows:

> "The territory served by defendant's radio station extends for a radius of seventy-five to one hundred miles from the City of Bellingham, depending upon conditions affecting radio braodcasting. A large portion, approxi- [285] mately sixty per cent, of the persons residing within the territory either own radios or have access to radios, and are actual or potential readers and subscribers of the various newspapers published by members of complainant corporation. Said newspapers serve the same territory and are distributed by the United States mails, carrier service maintained by individual newspapers, and other means of distribution. The circulation and distribution of said newspapers through said territory is almost entirely by means of railroad or motor transportation. As to all points outside of the city where each newspaper is published, a period of from not less than two (2) or three (3) hours up to twenty-four (24) hours or more necessarily elapses from publication to delivery to the readers and subscribers thereof."

for the reason that the facts contained in said proposed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show

cause order and the same are not substantially included in any finding of fact made by the Court.

VI.

The Court erred in refusing to make Finding of Fact "11" proposed by complainant, which was as follows:

> "Through the practice of "pirating" news and broadcasting the same, as herein set forth, defendant regularly appropriates news which has been gathered at great expense by complainant, and to which complainant's members are entitled. Defendant makes said news known to the general public throughout the territory served by its radio broad- [286] casts several hours in advance of the time when newspapers published by members of complainant corporation can reach actual or potential subscribers thereof. Thereby, and by such practice, defendant, for its own profit and for the enhancement of its own business, in effect, appropriates the products of the efforts and industry of complainant corporation. By said practice of making said news generally known to the public in said territory before said newspapers can be distributed among the public, said news is, to a large extent, rendered old, stale and uninteresting, and no longer news, and said practice greatly impairs and detracts from the attractiveness of said newspapers."

for the reason that the facts contained in said pro-

posed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court.

VII.

The Court erred in refusing to make Finding of Fact "12" proposed by complainant, which was as follows:

> "The practices of defendant deprive complainant and its members of the benefits of their labors and expenditures, and have caused dissatisfaction among complainant's newspaper members, due to the fact that defendant is thus enabled to spread and disseminate throughout the territory served by its station, in advance of dissemination by complainant's members, the same identical news which is [287] paid for and obtained by the members from complainant, as well as "local news" gathered by complainant's members and belonging to complainant. If defendant's broadcasts be continued, complainant's efforts and expenditures to gather and obtain news will be rendered largely without reward or value so far as concerns the territory served by defendant radio station, which is substantially the same territory served by complainant's members from which the news so broadcast was taken by defendant."

for the reason that the facts contained in said pro-

posed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court.

VIII.

The Court erred in refusing to make that portion of Finding of Fact "13" proposed by complainant, reading as follows:

> "Defendant has uniformly refused to desist from its practice, but proposed to continue with the same, and, in fact, does intend to continue the aforesaid practice, and will do so unless restrained from so doing."

for the reasons that the facts contained in said proposed finding of fact are in accordance with and supported by the uncontradicted allegations of the bill of complaint and affidavits on the show cause order and the same are not substantially included in any finding of fact made by the Court. [288]

IX.

That the Court erred in refusing to make Conclusion of Law "3" proposed by complainant, which was as follows:

> "As between complainant and defendant, complainant has a right, in the nature of a property right, in its news as against the use thereof by defendant until sufficient time has elapsed to enable complainant's members to complete the distribution of their newspapers in the territory served by them."

for the reason that said conclusion is the law of the case applicable to the conceded and undisputed facts and should have been made by the Court.

X.

That the Court erred in refusing to make Conclusion of Law "4" proposed by complainant, which was as follows:

> Defendant's acts as set forth in the bill of complaint and in the foregoing findings of fact constitute unfair competition as against complainant and its members, and the bill of complaint herein states a good cause of action entitling complainant to the relief prayed for therein."

for the reason that said conclusion is the law of the case applicable to the conceded and undisputed facts and should have been made by the Court.

XI.

That the Court erred in refusing to make Conclusion of Law "5" proposed by complainant, which was as follows:

> "From the affidavits, records and files herein, it appears that complainant and complainant's members are suffering irreparable damage and injury by defendant's practices." [289]

for the reason that said conclusion is the law of the case applicable to the conceded and undisputed facts and should have been made by the Court.

XII.

That the Court erred in refusing to make Con-

clusion of Law "6" proposed by complainant, which was as follows:

> "Complainant has no adequate, speedy or complete remedy at law, and no good cause has been shown why the court should not grant a preliminary injunction herein."

for the reason that said conclusion is the law of the case applicable to the conceded and undisputed facts and should have been made by the Court.

XIII.

That the Court erred in refusing to make Conclusion of Law "7" proposed by complainant, which was as follows:

> "Defendant's motion to dismiss should be denied and complainant's application for a temporary or preliminary injunction should be granted as prayed for."

for the reason that said conclusion is the law of the case applicable to the conceded and undisputed facts and should have been made by the Court.

XIV

The Court erred in making that portion of its Findings of Fact "4" and "5" which was in substance and to the effect that the Seattle Post Intelligencer and The Seattle Daily Times serve only part of the territory served by defendant's radio broadcasting station, because the uncontradicted evidence on the show cause hearing was to the effect that the territory served by these papers and defendant's radio station was the [290] same.

XV.

The Court erred in making that portion of its Finding of Fact "6" which was in substance and to the effect that defendant's appropriations of complainant's news was not until after such news items were published and distributed to the public in the regular public editions of the newspapers of complainant's members, and that the defendant did not secure such news items before they were published and distributed to the public, because the allegations in the bill of complaint and the uncontradicted showing in the affidavits on the show cause hearing were to the effect that such news items were taken and broadcast by defendant prior to the time when complainant's member newspapers could distribute such news to the public through its regular channels of newspaper distribution, and that such distribution required a period of twenty-four hours after publication, and the facts contained in such portion of said finding of fact are contrary to and against the uncontradicted facts alleged in the bill of complaint and affidavits in the show cause order.

XVI.

The Court erred in making that portion of its Finding of Fact "7" reading as follows:

> "in no instance, has the defendant ever taken or pirated any of the news claimed by complainants or its members, before such news items were published and distributed to the

public in the regular public editions of the newspapers of complainant's members."

because it is against and contrary to the conceded facts on the show cause hearing. [291]

XVII.

The Court erred in making that portion of its Finding of Fact "8" reading as follows:

"nor did the defendant, in the specific instances of appropriation of complainant's news, ever derive any profit, either direct or nominal, therefrom; that the defendant receives no compensation at all for disseminating such news to the public, but renders this particular service to the public free of charge;"

and also as follows:

"competition does not exist in the dissemination of news between any or said parties; that the acts of defendant, in the specific instances of using some of the news items as aforesaid from complainant's member newspapers, after their issues have been regularly distributed and dedicated to the information of the public, does not constitute unfair competition by defendant with the business of complainant and its members in news gathering and dissemination of such news for profit."

for the reasons that:

(a) The statement as to unfair competition is a conclusion of law and not a finding of fact;

(b) The uncontradicted allegations of the complaint and of the affidavits on the show cause order

were to the effect that practically all of defendant's revenue and the major portion of complainant's revenue is derived from advertising, which as to defendant was made attractive to the general public and therefore valuable to the advertisers by interspercing the same with such news broadcasts and the purpose of such broadcast being profit from its sponsoring advertisers;

(c) It is contrary to the undisputed facts, is against and contrary to the law applicable to the case.

XVIII.

The Court erred in making its Finding of Fact "9" reading as follows: [292]

> "That the defendant has not interfered with the complainant's alleged property right in any of said news items nor has defendant interfered with the normal operation of complainant's business, nor has defendant diverted any of complainant's profits in the normal operation of its business in any manner whatsoever."

for the reasons:

(a) That the same is not a finding of fact but in part a conclusion of law;

(b) That it is against and contrary to the conceded facts in the case, and is contrary to and against the law applicable to the case.

XIX.

The Court erred in making its Finding of Fact "10" reading as follows:

> "That the news items involved had been

printed in the regular issues of complainant's member newspapers and these issues had been, in the ordinary course, published and distributed to the public, and such news items and reports from that moment belonged to the public, including the defendant and all others who desire to use them for informative purposes, and for all purposes except for sale by a rival news gathering agency, which defendant is not, and that defendant never broadcast or disseminated any of these news items until after they had been so received by defendant contemporaneously with other members of the public, and then defendant broadcast them free of charge to the general public as an informative and public service, and defendant has not been guilty of unfair competition or bad faith, and the facts herein, does not involve the pirating by one news gathering and distributing agency of news reports of another such agency."

for the reasons:

(a) That the same is not a finding of fact but in part a conclusion of law;

(b) That it is against and contrary to the conceded facts in the case, and is contrary to and against the law applicable to the case. [293]

XX.

The Court erred in making its Finding of Fact "12" reading as follows:

"That the acts of defendant did not violate (any contract, positive law, copyright law,)

nor infringe any rights of complainants or its members, nor breach any confidential or private source of information, and were entirely within and performed on behalf of the general public."

for the reasons:

(a) That the same is not a finding of fact but in part a conclusion of law;

(b) That it is against and contrary to the conceded facts in the case, and is contrary to and against the law applicable to the case.

XXI.

The Court erred in making its Conclusion of Law "3" which was as follows:

"Defendant's acts as set forth in the bill of complaint and in the affidavits filed herein and in the foregoing findings of fact do not constitute unfair competition as against complainant or any of its members, and do not violate any of the property rights of complainant or any of its members, and the bill of complaint does not state facts sufficient to constitute a cause of action against the defendant"

for the reasons:

(a) That said conclusion is not supported by and is contrary to the findings of fact made and entered by the Court;

(b) That the same is not a correct conclusion of law applicable to the findings of fact made in the

case or to the facts set forth in the bill of complaint and in the affidavits filed herein, and that it is against the law and contrary to the law applicable to the case. [294]

XXII.

The Court erred in making its Conclusion of Law "4" which was as follows:

> "That the temporary restraining order herein heretofore granted complainant, should be dissolved and the defendant should be discharged from the show cause order heretofore issued herein, and the temporary injunction prayed for should be denied."

for the reasons:

(a) That said conclusion is not supported by and is contrary to the findings of fact made and entered by the Court;

(b) That the same is not a correct conclusion of law applicable to the findings of fact made in the case or to the facts set forth in the bill of complaint and in the affidavits filed herein, and that it is against the law and contrary to the law applicable to the case.

XXIII.

The Court erred in making its Conclusion of Law "5" which was as follows:

> "That the bill of complaint states no cause of action in equity nor any facts entitling complainant to the injunctive relief now sought nor any relief prayed for in the bill of com-

plaint, and defendant's motion to dismiss complainant's bill of complaint should be sustained and the bill of complaint should be dismissed with prejudice, and defendant should be allowed its costs herein against complainant."

for the reasons:

(a) That said conclusion is not supported by and is contrary to the findings of fact made and entered by the Court;

(b) That the same is not a correct conclusion of law applicable to the findings of fact made in the case or to the facts set forth in the bill of complaint and in the affidavits filed herein, and that it is against the law and contrary to the law applicable to the case. [295]

XXIV.

That the Court erred in discharging defendant from the show cause order and in denying complainant's application for temporary injunction for the reasons

(a) That the holding is contrary to the findings and contrary to the facts appearing in the bill of complaint and the affidavits on the show cause order, and

(b) is contrary to law.

XXV.

The Court erred in not granting the temporary or preliminary injunction and enjoining defendant from appropriating news of complainant and its member newspapers until twenty-four hours had elapsed, or until a sufficient time had elapsed after

publication to enable distribution of such newspapers to be completed.

XXVI.

The Court erred in holding that the bill of complaint stated no cause of action in equity nor any facts entitling complainant to the injunctive relief or any relief sought against defendant.

XXVII.

The Court erred in not holding that defendant was guilty of unfair competition in misappropriating the news of complainant and broadcasting it as its own to the resultant unjustified injury to the complainant.

XXVIII.

The Court erred in decreeing that the bill of compaint should be dismissed. [296]

XXIX.

The Court erred in not overruling defendant's motion to dismiss the bill of complaint for the reasons:

(a) On a motion to dismiss the allegations of the bill of complaint are to be taken as true;

(b) It appears therefrom that as between complainant and defendant, complainant has a right in the nature of a property right in its news as against the use thereof by defendant until complainant's members have completed the distribution of their newspapers in the territory in question, which distribution was not completed when defendant appropriated the news, and defendant's acts as set

forth in the bill of complaint constitute unfair competition as against complainant and its members and

(c) It appears therefrom that complainant and its members are suffering irreparable damage and injury by defendant's practices, against which complainant has no adequate, speedy or complete remedy at law.

WHEREFORE: Complainant prays that said decree be reversed and that preliminary or temporary injunction issue against defendant as prayed for, and that said District Court for the Western District of Washington be directed to reverse and set aside said decree and to enter a decree as prayed for, or to make and enter order requiring defendant to answer the bill of complaint.

C. W. HOWARD
J. W. KINDALL
Solicitors for complainant and appellant.

Service admitted and copy received February 25th, 1935.

KENNETH C. DAVIS
CLARENCE C. DILL
Solicitors for defendant and appellee [297]

[Title of Court and Cause.]

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS: That we THE ASSOCIATED PRESS, a corpora-

tion organized and existing under and by virtue of the laws of the State of New York, complainant above named and appellant on appeal, as Principal, and PACIFIC INDEMNITY COMPANY, a corporation, organized and existsing under and by virtue of the laws of the State of California, and authorized to do business as surety in the State of Washington, as Surety, are held and firmly bound unto KVOS, INC., defendant above named, and appellee on appeal herein, in the sum of ONE THOUSAND ($1,000.00) DOLLARS, lawful money of the United States, to be paid to it and its successors and assigns; to which payment well and truly to be made we bind ourselves and each of us jointly and severally and each of our successors and assigns by these presents.

SEALED with our seals and dated this 25th day of February, 1935.

WHEREAS, the above bounden The Associated Press, a corporation, has prosecuted an appeal to the United States Circuit Court of the Ninth Circuit to reverse the decree of the District Court for the Western District of Washington, Northern Division, dismissing complainant's bill of complaint and also [298] has prosecuted an appeal from the order of said Court denying application of said complainant The Associated Press, a corporation, for a temporary or preliminary injunction in the above entitled cause,

NOW, THEREFORE, the condition of this obligation is such that if the above named, The Associated Press, shall prosecute its said appeals to

effect and answer all costs if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

[Seal] THE ASSOCIATED PRESS

By J. W. KINDALL
One of its solicitors

PACIFIC INDEMNITY COMPANY

By CASSIUS E. GATES
Its Attorney in Fact

The foregoing bond is approved both as to sufficiency and form, and said appeals are hereby allowed, this 25th day of February, 1935.

.....
United States District Judge

Received a copy of the foregoing bond, approval thereof, and order allowing appeal this 25th day of February, 1935, and the bond is satisfactory in form and amount.

KENNETH C. DAVIS
CLARENCE C. DILL
Solicitors for defendant and appellee.

[Endorsed]: FILED FEB. 25, 1935. [299]

[Title of Court and Cause.]

STIPULATION AS TO STATEMENT OF EVIDENCE AND ORDER APPROVING AND AUTHENTICATING SAME

IT IS HEREBY STIPULATED between counsel for the parties hereto that the statement of

evidence upon appeal from the order denying temporary or preliminary injunction shall consist of the following, which are to be included in the transcript on appeal:

1. Bill of Complaint;

2. Affidavit of J. W. Kindall applying for temporary injunction, together with the affidavits thereto attached of Harold Turnblad and Frank I. Sefrit.

3. The joint affidavit of Hallock E. Reeves, Charles L. Sefrit, Ben H. Sefrit and W. C. Carver down to the bottom of page "6" thereof, together with last page thereof.

4. Defendant's motion to Dismiss and Affidavits of Rogan Jones and L. H. Darwin.

5. Rebuttal affidavit of Harold Turnblad.

6. Rebuttal joint affidavit of Hallock E. Reeves, Charles L. Sefrit, Ben H. Sefrit and W. C. Carver, containing all news items therein set out.

IT IS FURTHER STIPULATED that the Court may enter order of the approval and authentication of the foregoing as [300] such statement of evidence.

C. W. HOWARD
J. W. KINDALL
Solicitors for complainant and appellant

KENNETH C. DAVIS
CLARENCE C. DILL
Solicitors for defendant and appellee

The foregoing stipulation is hereby approved, and it is ordered that the statement of evidence on

appeal from order denying temporary or preliminary injunction shall consist of the documents and papers above enumerated, and the same are hereby to be deemed authenticated and filed as such.

DONE IN OPEN COURT this 25th day of February, 1935.

JOHN C. BOWEN
United States District Judge

[Endorsed]: FILED FEB. 25, 1935 [301]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT ON APPEAL BY THE ASSOCIATED PRESS.

TO EDGAR M. LAKIN, Clerk of the United States District Court for the Western District of Washington, Northern Division:

Please prepare, duly authenticate, and transmit to the United States Circuit Court of Appeals for the Ninth Circuit for the appeal of The Associated Press to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree filed and entered in the above entitled suit on January 28, 1935, a transcript incorporating the following portions of the record therein:

1. Bill of complaint.
2. Affidavit of J. W. Kindall applying for temporary injunction, together with affidavits thereto attached of Harold Turnblad and Frank I. Sefrit.
3. The joint affidavit of Hallock E. Reeves,

Charles L. Sefrit, Ben H. Sefrit and W. C. Carver down to the bottom of page "6" thereof, (omitting the news items thereinafter set out as being duplicated in Item No. 9 of this Praecipe) but including the final page or jurat thereof. [302]

4. Order to show cause and temporary restraining order.

5. Undertaking of complainant and order of Court approving and authorizing issuance of show cause order.

6. Motion of defendant to dismiss bill of complaint and attached affidavit of Rogan Jones.

7. Affidavit of L. H. Darwin resisting application for temporary injunction.

8. Rebuttal affidavit of Harold Turnblad.

9. Rebuttal joint affidavit of Hallock E. Reeves, Charles L. Sefrit, Ben H. Sefrit and W. C. Carver containing all news items therein set out.

10. Memorandum decision of the Court.

11. Request by complainant for and its proposed findings of Fact and Conclusions of Law with the refusal of Court and exceptions.

12. Findings of Fact and Conclusions of Law.

13. Decree of dismissal.

14. Petition on appeal and orders allowing appeal.

15. Assignment of Errors.

16. Bond on appeal and approval thereof.

17. Citation on appeal and acceptance of service.

17½. Stipulation as to statement of Evidence.

18. This Praecipe and all endorsements on the

foregoing, together with all certificates required to be attached.

We waive provisions of law requiring printing of record in this district, request same be printed by clerk of Appellate Court.

C. W. HOWARD
J. W. KINDALL
Solicitors for complainant and appellant [303]

Service of the foregoing Praecipe is hereby acknowledged and receipt of copy thereof admitted, and the foregoing Praecipe for the transcript of the record on appeal is hereby approved by appellee this 25th day of February, 1935.

KENNETH C. DAVIS
CLARENCE C. DILL
Solicitors for defendant-Appellee

[Endorsed]: FILED FEB. 25, 1935 [304]

[Title of Court and Cause.]

CERTIFICATE OF CLERK OF U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD

United States of America,
Western District of Washington—ss.

I, EDGAR M. LAKIN, Clerk of the United States District Court for the Western District of Washington do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 304, inclusive, is a full, true and complete copy of so much of the record, papers and

other proceedings in the above and foregoing entitled causes as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of the said District Court at Seattle, Washington, and that the same constitute the record on appeal herein from the Decree of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 1083 folios at 15¢	$ 162.45
Appeal fee (Sec. 5 of Act)	5.00
Certificate of Clerk to Transcript of Record	.50
Total	$ 167.95

[305]

I hereby certify that the above cost for preparing and certifying record, amounting to $167.95, has been paid to me by the solicitors for the Appellant.

I further certify that I attach hereto and transmit herewith the original citation on appeal issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court, at Seattle, in said District, this 11th day of March, 1935.

[Seal] EDGAR M. LAKIN,
Clerk United States District Court, Western District of Washington.

By TRUMAN EGGER
Deputy. [306]

[Title of Court and Cause.]

CITATION ON APPEAL

The United States of America,—ss.

To KVOS, INC., GREETING:

YOU ARE HEREBY CITED and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California, on the 27th day of March, A. D. 1935, pursuant to an appeal filed in the office of the Clerk of the United States District Court in and for the Northern Division of the Western District of Washington, wherein The Associated Press, a corporation, complainant, is appellant, and KVOS, Inc., a corporation, defendant, is appellee, to show cause, if any there be, why the decree of said Court signed, filed and entered on the 28th day of January, A. D. 1935, dismissing the bill of complaint herein and denying complain-

ant's application for a temporary or preliminary injunction as mentioned in said order allowing appeals, should not be corrected, and why justice should not be done to the parties in that behalf.

WITNESS: The Honorable JOHN C. BOWEN, United States [307] District Judge for the Western District of Washington, this 25th day of February, A. D., 1935.

JOHN C. BOWEN
United States District Judge

Due service of the within Citation on Appeal and receipt of copy thereof is hereby admitted and acknowledged on behalf of KVOS, INC., appellee, this 25th day of February, 1935.

KENNETH C. DAVIS
CLARENCE C. DILL
Solicitors for KVOS Inc., Appellee

[Endorsed]: FILED FEB. 25, 1935 [308]

[Endorsed]: No. 7798. United States Circuit Court of Appeals for the Ninth Circuit. The Associated Press, a corporation, Appellant, vs. KVOS, Inc., a corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed March 13, 1935.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7798

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE ASSOCIATED PRESS, a corporation,
Appellant,

vs.

KVOS, INC., a corporation,
Appellee.

Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

[Title of Court.]

Excerpt from proceedings of Friday, September 13, 1935.

Before: WILBUR, DENMAN and MATHEWS, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

ORDERED appeal in above cause argued by Mr. William H. Cannon, counsel for appellant, and by Mr. Clarence L. Dill, counsel for appellee, and submitetd to the court for consideration and decision, with leave to counsel for appellant to file a reply brief in twenty-one (21) days, and with leave to counsel for appellee to apply for leave to reply thereto, if so advised.

[Title of Court.]

Excerpt from proceedings of Monday, December 16, 1935.

Before: WILBUR, MATHEWS and HANEY, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and

that a decree be filed and recorded in the minutes of this court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Before: WILBUR, DENMAN and MATHEWS, Circuit Judges.

DENMAN, Circuit Judge:

This is an appeal from a decree dismissing with prejudice a bill in equity brought by the Associated Press, a New York membership corporation, engaged in the gathering and distribution of news and its publication, along with paid advertising matter, in newspapers throughout the United States, against KVOS, Inc., a Washington corporation, also engaged in the gathering of news and its publication with paid advertising matter by radio from Bellingham, Washington. The bill charges KVOS with unfair competition in the pirating of Associated Press news and its publication by KVOS radio in what it calls its "Newspaper of the Air", and seeks injunctive relief. The affidavits on the motion for preliminary injunction describe one hundred and eighty such piratings in which appear four

hundred and twenty-five paragraphs identical with the Associated Press news articles.

The appeal presents the following questions, based upon the grounds assigned in the motion to dismiss and on the opposition to the motion for a temporary injunction: (a) Does the matter in controversy exceed the jurisdictional sum of $3,000.00, exclusive of interest and costs? (b) Is there jurisdictional diversity of citizenship? (c) Does the bill allege a sufficiency of facts to constitute a valid cause of action in equity, and, if so, (d) Should a preliminary injunction have been granted?

The bill's description of the business of the Associated Press is similar to its portrayal in the opinion of the Supreme Court in International News Service v. Associated Press, 248 U. S. 215, 229. Complainant is a cooperative organization incorporated under the membership corporation laws of the State of New York, its members being either proprietors or representatives of about 1200 newspapers published in all parts of the United States. Complainant gathers in all parts of the world, by means of various instrumentalities of its own, by exchange with its members, and by other appropriate means, news and intelligence of current and recent events of interest to newspaper readers and distributes it daily to its members for publication in their newspapers. The cost of the service, amounting approximately to many millions of dollars per annum, is assessed upon the members and becomes a part of their costs of operation, to be recouped, presumably

with profit, through the publication of their several newspapers. Under complainant's by-laws each member agrees upon assuming membership that news received through complainant's service is received exclusively for publication in a particular newspaper, language, and place specified in the certificate of membership, that no other use of it shall be permitted, and that no member shall furnish or permit anyone in his employ or connected with his newspaper to furnish any of complainant's news in advance of publication to any person not a member. And each member is required to gather the local news of his district and supply it to the Associated Press and to no one else.

Supplementing the bill is the court's judicial knowledge that, since the International News case, radio broadcasting has been developed and a great business created in circulating advertising along with news and other features to attract its audiences to the advertising. Once this material is gathered its circulation is instantaneous as against from two to twenty-four hours for the press. Radio has added another celerity to news circulation, just as have the railroad and, later, telegraphic transmission. Impairment of radio's service would affect the blind; likewise impairment of the press would injure the deaf.

So far as concerns soliciting for advertising income, the two processes are alike in that they appeal to the human mind by giving wide circulation through mechanical and physical processes to the

advertising intermingled with interest arousing news, comedy and drama. It does not affect the fundamental identity of the two enterprises that the appeal of one is through the auditory and the other through the visual nerve system of the prospective customers of the advertisers whose trade is so solicited. Both businesses require large investments in plants constituting the power creation and the mechanism of circulation. Both necessarily employ large forces of trained experts for gathering their material and personnel in their circulating processes. The many units in each of the two businesses have nation-wide cooperative organizations for the gathering of their material and making it available to the units appealing to the smallest groups of population. Among these are the complainant, for the member papers it here represents, and for KVOS, as it admits, Radio News Association of New York. KVOS not only admits this but also claims its news service is far superior to the Associated Press. Hence, without the latter's news, it is able to supply outlying districts with the essentials of the happenings of the day as efficiently as the dweller in cities.

The bill further alleges that many of the newspapers of its members are distributed throughout a circular broadcasting area of 100 miles radius over which the defendant corporation publishes its news and advertising, and that the Associated Press newspapers compete with KVOS in the business of seeking advertising to residents there. Practically all of

KVOS' income from which it seeks profit is payment for the service of publishing advertising matter. Likewise this constitutes a large part of the income of the papers. KVOS' income, mostly from advertising, supports its combined news and advertising circulation without charge to its public. The newspapers' circulation is supported by income which is a combination of charges from advertising and their readers' subscriptions.

Among the Association's many papers alleged to be circulated in the KVOS area are three from which it is charged the gathered news has been appropriated by KVOS. They are the "Bellingham Herald", "Seattle Post Intelligencer" and "Seattle Daily Times". They publish daily and Sunday editions of their papers covering in one or another the morning and evening news distribution.

The charge is that KVOS appropriated, from the editions of these three latter papers, the news distributed to the papers by the complainant, and which had been collected for them by complainant's news gathering and by similar activities on the part of all the Association's cooperative members. It is alleged that the appropriated news appearing in the editions of complainant's papers is published by the KVOS broadcast often verbatim and sometimes slightly altered. The radio publication is completed before all the papers are distributed, and while the news is what the Supreme Court terms as "fresh" and the journalistic world as "hot". As to those delivered before the broadcast, their

subscribers, if using radio, are certain soon after delivery to receive the same news free of charge. It is alleged that not less than sixty per cent of the inhabitants of the area in which KVOS publishes its news and advertising, own or have access to and use the radio. The damage caused the complainant by this alleged unfair competition is claimed to be in excess of the jurisdictional amount.

The Supreme Court in the International News case described this appropriation and circulation of a competitor's fresh news as news "pirating" and held that such pirating practices inflict a substantial and irreparable injury to the business of collecting and distributing news and the collector's interest in such news when assembled, which injury, in the circumstances there considered, warranted injunctive relief. The bill here seeks similar relief, on behalf of the plaintiff and the large numbers of its members, from the alleged practices of KVOS. In view of our disposition of the jurisdictional contention in favor of appellant, the paramount question for our consideration is whether the instant case can be distinguished from International News Service v. Associated Press.

The claimed difference is that the pirated news instead of being published by a competing press is published by radio. The characteristics of the differences claimed are (1) that KVOS seeks the attention of a listening public, paying nothing to the radio publishers, instead of a reading public, paying for its papers, and (2) that the pirated ma-

terial and accompanying advertising reach the prospective customers almost instantaneously, while the press publication and distribution take from two to twenty-four hours.

These are urged as distinctions making KVOS' acts not competitive, although they may persuade the public not to purchase and read the advertising or the news of the papers upon which the piracy is committed, because, to some, the pirated news is stale by the time the newspapers are received and, as to others, the pirated matter is certain to be received by them, without paying for it, so soon after newspaper delivery. The charged unfair competition and piratical damage to the Associated newspapers' business and to their interest in the gathered news obviously may deprive them of a portion both of their subscription payments and their advertising income.

KVOS presents other arguments, based on its affidavits on the motion for a preliminary injunction, purporting to sustain the dismissal of the bill with prejudice. They are not pertinent to the dismissal and are later considered in connection with the motion to which they were addressed.

In its final analysis the argument of KVOS to sustain the dismissal rests on the proposition that the bill in International News Service v. Associated Press, supra, would have been dismissed by the Supreme Court if the International News Service's members then had had a much faster distribution of the pirated news and had relied entirely on ad-

vertising income from their papers, the appropriated news being presented free of charge to prospective customers of their advertisers, to some readers before and to others very shortly after the delivery time of the papers of the Associated Press' members, who had supplied the creative energy and the funds for the collection of the news.

(a) Jurisdictional amount of claimed damage to complainant's business and to its interest in its gathered news. The majority opinion of the Supreme Court in the case of International News Service v. Associated Press recognizes a quality in the latter's corporate structure and functioning that is sui generis. In the first sentence of the opinion it holds that the Associated Press is competing with a similar corporation, "in the gathering and distribution of news *and* its publication for profit in newspapers throughout the United States". (Italics inserted). To be "competitors in the * * * publication (of news) for profit in newspapers throughout the United States" must mean that such membership corporation engages in its publication for profit in the newspapers of its associated members. The use of the conjunctive "and" before the words "its publication for profit" in describing the competition between the two parties in that litigation compels this interpretation. This peculiar integration of the corporate structure itself with the functioning of the newspapers which are associated in its membership, underlies the entire reasoning of the opinion. The profit seeking business of the newspapers is

there treated as an integral part of the corporate purpose. The several millions of dollars here alleged to be invested in the Association's business may well be damaged to the extent of $3,000 by the pirating practices described.

This answers the suggestion that the corporation in gathering news and its distribution to its members receives no more compensation than its cost. However, even in this more confined area of the corporate interest, the absence of pecuniary profit would not mean that the corporation is not engaged in a business in which is created, by the gathering of news, a *real value* in excess of the amounts expended in its gathering. The fact of the long continued existence of the Associated Press, with its excess of 1000 members, shows that its corporate activities must create some added value in the gathering of the news it distributes to them.

Furthermore in addition to the interest in the business as a going concern entitled to continue its creative processes, the Supreme Court has held that the association has an interest warranting protection *in the assembled news itself.* This interest the court defines as a "quasi property right" in the course of making its affirmative answer to the question which it framed as follows:

"The question, whether one who has gathered general information or news at pains and expense for the purpose of *subsequent* publication *through the press* has such an interest in its publication as may be protected from interference, has been raised

many times, although never, perhaps, in the precise form in which it is now presented." (Italics inserted).

> International News Serv. v. Asso. Press, 248 U. S. 215, 237.

It is obvious that the business of gathering and distributing to members, *before* profitable publication, could conceivably be damaged to the extent of $3,000 by the misappropriation and premature publication of the news material. To hold otherwise would warrant the inference that no corporation could be damaged by a wrongful attack on its business, when that business happened to be run at no profit or at a loss. Also we are unable to hold irrational the claim that the piracy caused a $3,000 damage to the Association's quasi property right in the news.

(b) Diversity of citizenship. Sufficient diversity of citizenship appears to sustain the jurisdiction. In the bill in the International News case no diversity appears except that between the two associations. The citizenship of none of the members is alleged. As has been shown, the Supreme Court held in that case that a membership corporation which is a "competitor" of another in the "publication" of news "for profit" has sufficient interest to warrant its suing for injunctive relief against unfair competition. In addition it may sue on behalf of its members. International News Serv. v. Asso. Press, 233. If it had not been held specifically that the cor-

poration itself had an interest in the competition of publishing for profit, the holding that the Associated Press could sue on behalf of its members, necessarily implied a right to sue on its own behalf. An agent cannot sue for equitable relief on behalf of a principal where the agency is bare of interest in the relief sought. This was held the rule in suits where one of a large group similarly affected, sues on behalf of the others, in the early decision of Georgetown v. Alexandria Canal Co., 12 Peters 91, 99.

"In this idea, we think they were in error; and that they cannot, upon any principle of law, be recognized as parties competent in court to represent the interests of the citizens of Georgetown. Nor is the difficulty obviated, by associating with them the citizens of Georgetown, as persons in whose behalf they sue. There are, indeed, cases in which it is competent for some persons to come into a court of equity, as plaintiffs, for themselves and others having similar interests; such is the familiar example of what is called a creditors' bill. But in that, and all other cases of a like kind, the persons who, by name, bring the suit, and constitute the parties on the record, have themselves an interest in the subject-matter, which enables them to sue, and the others are treated as a kind of co-plaintiffs with those named, although they themselves are not named; but in this case, it has been already said, that the appellants have no such interest as enables them to sue in their own name, and consequently,

the whole analogy fails. Moreover, if the citizens of Georgetown were even parties on the record, the objection would equally lie against them, unless they could show a special damage as a ground to stand upon."

KVOS argues that because the International News opinion at page 229 holds that there had been a waiver of some question of parties, the court meant a waiver of the requirement of parties NECESSARY TO THE JURISDICTION. Such a construction would require a reversal of the many decisions holding that diversity of citizenship, where necessary to jurisdiction, cannot be waived and its absence requires dismissal by the Supreme Court. Chi. Bur. Q. Ry. v. Willard, 220 U. S. 413, 420. Since the question of parties was called to the attention of the court in the International News case it must have considered that the Associated Press was sufficiently an interested adverse party to confer jurisdiction.

KVOS claims that among the many Association papers alleged to be circulated in the competing area, three are necessary parties because they are specifically alleged to be those from whom the news belonging to all the papers was pirated. As to one of them, the Bellingham Herald, it is asserted in the motion to dismiss that it "had been collusively omitted because its joinder would have destroyed complete diversity of citizenship". Such a pleading of what "would have" happened does not tender an issue of fact, but assuming that the joinder would

have the claimed effect, the bill does not disclose that the Bellingham Herald is a citizen of Washington. If that could be a defense it should be raised by answer. Eq. Rule 29. Even if pertinent at this time, there is no evidence in the record as to the citizenship of the owner of that paper. We can see no reason why the specific mention of the three papers from which was pirated the news of all the Associated's members requires the joinder of any one of their owners, as a necessary or indispensable party. Their presence as parties is not required to prove the association and all the members have been wronged by a misappropriation from some of them.

It therefore appears that the Associated Press has brought its case within the equitable jurisdiction of the federal courts and, if establishing its equity, is entitled to relief in its own right. This would be so even if among the group it represents there are members, not parties, who are citizens of the same state as the defendant. It was held in a class suit in Indiana, where Indiana members of the group were not parties, that not only was there federal jurisdiction, but the rights of the Indiana members were determined by the decree. Supreme Tribe of Ben Hur v. Cauble, 255 U. S. 356, 366. True, any one of the three mentioned or, indeed, any of the members, might choose to intervene, but such intervention would not defeat the jurisdiction already acquired. Supreme Tribe of Ben Hur v. Cauble, supra, 366, applying Stewart v. Dunham, 115 U. S. 61, 64.

(c) KVOS' business of publishing, by the broadcast of combined advertising and the pirated news, for the profit from its advertising income constitutes unfair competition with the newspapers' business of gathering the news pirated by KVOS and publishing it combined with the advertising, seeking the profit both from the advertising service and from the subscriptions of its readers. The papers are unconscionably injured in performing a public function as well as in conducting a legitimate business.

KVOS lays great stress on the public interest in the news gathering and distribution and the public obligation of the gatherer and distributer, as likewise does the Associated Press. We believe these considerations have been properly pressed upon us. The First Amendment to the Federal Constitution has recognized this public function of the press in the provision for its freedom. While no constitutional right is here involved, this constitutional recognition emphasizes the exceptional character of the right which is sought to be protected in a federal court sitting in equity. When the Constitution speaks of the freedom of the press it refers to the freedom of PRIVATE AND NON-GOVERNMENTAL PERSONS OR BODIES, engaged in news gathering and dissemination, from interference by governmental agencies. That is to say, that the public function in the gathering and dissemination of news IS PRESUMED BY THE CONSTITUTION TO BE IN PRIVATE HANDS.

Under our capitalistic system this means that news distribution as a public function will be in large part by business men acting under the inducement of the profit motive. The public therefore has an interest in protecting the business of news gathering and disseminating agencies against the impairment of their efficiency, by the inevitable reduction of their business income through the misappropriating of news prior to the expiration of the time during which the Supreme Court has held that there exists in it a "quasi property" interest. It is therefore proper to say that the Associated Press is here seeking protection not only of its legitimate business but also, as both parties assert, in its discharge of a public function of fundamental value and importance.

The radio performs a function in the publication of news similar to that of the press. It has the advantage of greater speed and the disadvantage of the absence of a printed record for more deliberate absorption. If radio communication had been discovered in the Eighteenth Century it is arguable that the businessman and others utilizing its process would have received in the First Amendment of the Constitution a recognition like that accorded the owners of newspapers. Congress has appreciated radio's importance and sought to make it effective against the confusion of distribution in the peculiar and little understood medium through which it passes, by regulation of the use of wave lengths.

While this court takes judicial notice of radio's enormous business expansion, we cannot assume that its resources from its advertising income are not sufficient to support its own news gathering agency, the "Radio News Association of New York". Even ignoring the question of good conscience in an equity tribunal, we can find nothing in the bill to warrant our holding that radio will fail in its public function of news distribution, if it is not permitted to misappropriate the material gathered by an agency of the press.

So far as concerns the case against piracy presented by the bill, the speed of the radio's distribution of news makes the injury done the press in the performance of its business and civic activities the more effective and certain. Not only its speed but its necessarily free publication, actually or potentially to every user of a radio set, make the more deadly its competition for the circulation of its advertising.

KVOS' motion to dismiss admits the pirated appropriation of the news, its circulation and its destructive effect on the press. Its excuse is that it gives the material so obtained as a benefaction to its audiences, and that both the taking and circulation are so completely eleemosynary that this court must find, against the allegations of the bill, that the purloined news is in no way the defendant's weapon in its competition with the press for the patronage of advertising merchants.

Despite the ability with which counsel presented this argument, we are not persuaded that it has merit. Common sense compels us to agree with the complainant that the purloining of complainant's fresh news and its circulation in KVOS' "Newspaper of the Air" are both elements of a business of publication for profit. This profit is to be gained through widening its circulation at the expense of the circulation of the Associated papers. Complainant's news is not only made stale to those of their readers who first have access to the "Newspaper of the Air", but also is made free, while still hot, to their readers who pay a usual subscription price for their papers. The obvious tendency of these factors is to cause complainant's papers to lose circulation and with it the advertising income which is based on circulation. We are unable to see any theory under which such a diversion of advertising income from the Associated papers to KVOS, with its incidental destruction of subscriber income, can be called anything but "unfair competition".

A similar defense that a charged act was not a wrong, because it was not done for profit, was considered and disposed of in accord with ourruling here in the case of Herbert v. Shanley, 242 U. S. 591, 593. The wrong charged was infringement of a copyright by a public performance of a musical composition, whereas we are considering the phase of this case involving impairment of a legitimate business by unfair competition. However, the difference in the wrong charged does not distinguish the

ruling on the excuse for the wrong In that case the music was performed by a restaurant orchestra and it was claimed that it was "not a performance for profit", because there was no charge for it in the bills to the diners claimed to have had the pleasure of its entertainment. The court finds no merit in the defense in the following language:

> "The defendants' performances are not eleemosynary. They are part of a total for which the public pays, and the fact that the price of the whole is attributed to a particular item which those present are expected to order, is not important. It is true that the music is not the sole object, but neither is the food, which probably could be got cheaper elsewhere. The object is a repast in surroundings that to people having limited powers of conversation or disliking the rival noise give a luxurious pleasure not to be had from eating a silent meal. If music did not pay it would be given up. If it pays it pays out of the public's pocket. Whether it pays or not the purpose of employing it is profit and that is enough."

So in the present case the publication of the pirated news "is not the sole object, but neither is the" advertising "which probably could be got cheaper elsewhere" if the news entertainment were omitted. If the news distribution "pays it pays out of the (advertisers') pocket. WHETHER IT PAYS OR NOT THE PURPOSE OF EMPLOYING IT IS PROFIT AND THAT IS ENOUGH".

The Master of the Rolls in Sarpy v. Holland, 2

Ch. 1908, 198, 213, ruled adversely to a similar claimed excuse for a performance in a hotel of a musical composition, the rendition of which was expressly licensed "at entertainments which are absolutely free". The opinion holds

> "Assuming that the license pleaded was proved, I feel no doubt whatever that it did not justify what was done. This performance was paid for by Mr. Holland, the publican, with a view of gain; it was worth his while to pay sixteen shillings a performance. It was obviously part of the means by which he attracted customers, and hoped to gain, and did gain, a profit in carrying on the business of an hotel. That being so, it seems to me impossible to contend that this was a performance at a gratuitous public entertainment."

We hold that the bill sufficiently alleges a controversy of equitable cognizance between citizens of different states and for relief for an amount of damages in excess of the jurisdictional requirement, and that the decree below ordering such a dismissal must be reversed.

(d) The motion for a preliminary injunction should be granted. This motion was submitted on affidavits. KVOS' affidavits, instead of denying competition with the association's papers in news circulation, insist that, through its own reporters and its news gathering agency, the Radio News Association with a personnel of 7,500 news gatherers and distributers, the news it circulates to its public is "live, hot, up-to-the-minute reports of news events

of the nation and world as they happen from hour to hour, night or day". It insists that it could not use the Associated Press news service, because "it does not supply news of that kind or character. On the contrary, if affiant should attempt to broadcast the news supplied by Complainant Association, affiant would, in the language used by United States Senator Dill, the author of the Federal Radio Act, in a public address attacking the press associations attitude towards radio, 'chloroform his radio listeners'."

Supplementing its claims of the efficiency of its news circulation over that of the newspapers, it specifies certain news "scoops" in which its news gathering agency has surpassed its rival agencies, and adds that "this action has been prompted BY COMPETITIVE REASONS rather than for any meritorious purpose".

It appears from the uncontradicted affidavit of the manager of the Associated Press' press service in this area that KVOS "has filed with the proper authorities at Washington, D. C. its schedule of rates for advertising when such advertising is inserted in the course of its news broadcasts, as well as rates for advertising when not given during the course of such broadcasts, and it appears therefrom that the charges to such advertisers during the time that such news broadcasts are given is greater than at other times when such advertising is given over said radio station,".

There can be but one conclusion from these uncontradicted facts. KVOS is competing with the

press in its Newspaper of the Air and the purpose of this competition is to procure the patronage of advertisers who will pay more for its circulation of advertising if it is intermingled with the articles of its Newspaper of the Air broadcasts.

Properly conducted, this is a description of a fair competition for advertising patronage, but as we have before suggested, it affronts common sense to claim that KVOS pays the salaries of its own local reporters and the considerable charge shown for the news supplied by its radio news gathering association, so yielding a higher price for the intermingled advertising, and that, despite this, the circulation of such news is a mere gift of an educational public service and not for the profit arising from the higher advertising rates.

These facts dispose of KVOS further contention that the impressions created by radio circulation of news, on the minds of listening prospective customers of the advertisers, are too evanescent and vague to add appreciably to its competition for the patronage of advertisers using or likely to use the papers of the Associated Press.

The higher price for the advertising intermingled with news disposes of KVOS' contention that, since news distribution occupies but ten percent of KVOS' broadcasting time, it is too unimportant an incident of its business to warrant equitable relief. The question is not one of percentage of time but of the intensity of the interest aroused and the intensity of the news attraction to advertising is demonstrated by the higher rate. In the International

News case it was not claimed that the pirated news occupied a major part of the news distributed by the International. On the contrary, it appeared that the piracy was principally confined to news from Great Britain, necessarily a small part of the total news published in its papers.

The question then remains whether, in what may well have been a legitimate business competition in the distribution of news for the accompanying profit, the competition was in part waged by KVOS' use against its opponents, of their own news, pirated by it from the Associated Press.

KVOS relies on the testimony of L. H. Darwin, described in the affidavit of the owner of KVOS as employed "to conduct this program of news, and the said Darwin has full charge and the responsibility of that program". Manager Darwin's affidavit states that "affiant does not use the news of complainant or its member newspapers" and "further that at no time within the knowledge of Affiant has the Defendant Radio Station KVOS appropriated, pirated or used any news items belonging to Complainant, or the Bellingham Herald, or any other of its member papers;".

The date of Manager Darwin's affidavit, November 28, 1934, is important. In response to these general denials of the pirating, complainant, two days later, filed the affidavit of two witnesses who testified that on November 14, 1934, that is, a fortnight before his general denials, Darwin himself had circulated by broadcast two Associated Press articles over KVOS. The text of the matter pirated by him

in the identical verbiage of the papers, is set forth in full detail and the whole incident is described with particularity. It is not without significance, in considering other statements of KVOS' manager, that the particulars of this specific charge, so challenging the varacity of his statement that he "does not use the news of complainant or its member newspapers", remain unanswered in the record. Such inaction does not enhance the good faith of the further contention that, despite the claimed superiority of the radio's national and local news gathering, it will be prevented in the performance of a public obligation if it is enjoined from appropriating and radioing to certain outlying communities the news gathered by the complainant—which news, KVOS claims, "would chloroform its radio listeners". Possibly the reason for not answering the charge against KVOS' manager is because his TWO appropriations of complainant's news are buried in the ONE HUNDRED AND EIGHTY similar appropriations specifically set out in the complainant's affidavits.

These one hundred and eighty piratings occupy three hundred and eighty-five pages of the printed record. The whole of each of complainant's articles is printed and the pirated portions indicated by capitals. A careful study shows that one hundred and fifty-three of the appropriations are VERBATIM broadcasts of such substantial portions of the articles that, under no theory, could ANY have been composed by KVOS or its own news association. Eighty are from the "Seattle Times", sixty-two

from the "Post Intelligencer" and twelve from the "Bellingham Herald". In the one hundred and fifty-three articles were broadcast four hundred and twenty-five identical paragraphs. Besides this there are many identical sentences containing the gist of other articles.

Had the remaining twenty-seven broadcasts been offered alone, their similarity in composition conceivably could have been attributed to the explanation of KVOS' manager as to all the pirated broadcasts, that the similarity results "from the usual newspaperman's treatment of a common subject which contains the same elements of thought or sentiment,". His attempt to explain in this manner the identical wording of the four hundred and twenty-five paragraphs in the one hundred fifty-three appropriations is such a challenge to common intelligence that again KVOS' good faith is brought in question.

A study of the affidavits in the record of the International News case shows that the preliminary injunction there granted was ordered sustained by the Supreme Court on a showing much less comprehensive and detailed than in the record here. Less than thirty instances of piracy are there described as compared with over five times that number here.

It appears, and it is not denied, that complainant's income from its distribution of its news to the papers serving KVOS' radio area is $6,000 per month, or $72,000 per annum. Since the thirty cases of piracy were sufficient to show a threatened dam-

age waranting a preliminary injunction in the International case the one hundred fifty-three are sufficient here. The Supreme Court there, without evidence of the loss of a subscriber, took notice that such a practice threatened harm to the circulation of the association's member papers requiring injunctive relief. We take similar notice here that such pirating may well affect both their subscriber and advertising income.

We see no merit in KVOS' contention that enjoining it from pirating complainant's news will deprive KVOS' auditors in more remote districts of anything to which they have a right. KVOS admits that from the matter gathered by its own news gathering association and its own reporters, it supplies the public need for news in such districts with "the news events of the nation and world as they appear and happen by night and day, as well as the interesting and popular local news items".

Concerning the affirmative defense that complainant's hands are stained by similar misappropriations of KVOS news by the "Bellingham Herald", one of its members, it is enough to say that KVOS' general charges are properly denied and, unlike KVOS, the one particular incident alleged is specifically and sufficiently explained as resulting from the similar working of the journalistic mind on the same news.

The decree is reversed and the District Court ordered to grant a preliminary injunction restraining KVOS from apropriating and broadcasting any of

the news gathered by the Associated Press for the period following its publication in complainant's newspapers during which the broadcasting of the pirated news to KVOS' most remote auditors may damage the complainant's papers' business of procuring or maintaining their subscriptions and advertising. In this connection consideration should be given to the likelihood of KVOS' auditors awaiting the pirated news because it is free and does not require subscription for a newspaper.

[Endorsed]: Opinion. Filed Dec. 16, 1935. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 7798

THE ASSOCIATED PRESS, a corporation,
Appellant,

vs.

KVOS, INC., a corporation,
Appellee.

DECREE

APPEAL from the District Court of the United States for the Western District of Washington, Northern Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Wash-

ington, Northern Division, and was duly submitted:

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed with costs in favor of the appellant and against the appellee, and the District Court is ordered to grant a preliminary injunction restraining KVOS from appropriating and broadcasting any of the news gathered by the Associated Press for the period following its publication in complainant's newspapers during which the broadcasting of the pirated news to KVOS' most remote auditors may damage the complainant's papers' business of procuring or maintaining their subscriptions and advertising, and in this connection consideration should be given to the likelihood of KVOS' auditors awaiting the pirated news because it is free and does not require subscription for a newspaper.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by this Court, that the appellant recover against the appellee for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered Dec. 16, 1935. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing five hundred and eighty-two (582) pages, numbered from and including 1 to and including 582, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38, of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of March, A. D. 1936.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 584] IN THE SUPREME COURT OF THE UNITED STATES

In Equity. No. 7798

THE ASSOCIATED PRESS, a Corporation, Appellant,

vs.

KVOS, INC., a Corporation, Appellee

ORDER EXTENDING TIME WITHIN WHICH TO FILE APPLICATION FOR WRIT OF CERTIORARI

Upon reading and filing the Petition For Order To Extend Time within which to file Writ of Certiorari in the above entitled cause, and it appearing therefrom to the satisfaction of the Court that just and reasonable cause exists to extend the time within which KVOS, Inc., the above named Appellee, shall file its application for a Writ of Certiorari in said cause;

Now Therefore, it is Hereby Ordered that said KVOS, Inc., the Appellee above named, be and it is hereby granted, an extension of 30 days within which to file its application for a Writ of Certiorari in the above entitled action.

Dated March 7, 1936.

Geo. Sutherland, Justice of The Supreme Court of The United States.

[fol. 585] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 18, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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No. [redacted] 28

Supreme Court of the United States

OCTOBER TERM, 1935

KVOS, INC., a corporation

Petitioner,

vs.

THE ASSOCIATED PRESS, a Corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CLARENCE C. DILL,
Bowen Building,
Washington, D. C.

KENNETH C. DAVIS,
Northern Life Tower,
Seattle, Washington.

WILLIAM H. PEMBERTON,
Olympia, Washington.

Miller & Richardson Printing Co., Bellingham, Wash.

No.....

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per cent of its time for other programs, in such competition with the Respondent news gathering agency, who do not solicit advertising or subscriptions, as will sustain this action for unfair competition? Especially, in view of this Court's ruling in International Shoe Co. vs. Federal Trade Commission (1929) 280 U.S.291? 8

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IV. The decision of the Circuit Court erroneously defines unfair competition. It stigmatizes an act committed in the furtherance of the public interest as unfair and wrong upon vague and apprehensive averments in Bill of Complaint, in spite of, the cardinal rule that mere apprehension or fear will not warrant injunctive relief. In addition, the Circuit Court's decision conflicts with a fundamental rule applied by this Court, in that, an injunction should not be granted except in a case reasonably free from doubt. 13

V. The qustion is an important one and the decision of the Circuit Court misinterprets and misapplied the ruling of this Court in International News Service vs. Associated Press (248 U. S. 215). Further, the peculiar scientific circumstances that have arisen since the date of the decision in the International News Service case (supra) justifies a searching inquiry into the particular subject matter herein involved. Then too, Radio as an industry, is anxious for a clear enunciation by this Court of certain guiding principles, and Petitioner respectfully avers that principles enunciated at a time when radio was never contemplated are confusing, and the question as to whether this subject matter is one for the courts or the Congress, should be forever settled by a decision of this Court..... 18

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No.....

Supreme Court of the United States

OCTOBER TERM, 1935

KVOS, INC., a Corporation,

Petitioner,

vs.

THE ASSOCIATED PRESS, a Corporation,

Respondent.

Petition

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of KVOS, INC., a corporation, for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit in the above cause, respectfully shows:

STATEMENT OF THE MATTER INVOLVED

Petitioner operates a small 100-watt radio station in the City of Bellingham, State of Washington, and its emissions, at the most, are incapable of being received at a distance greater or outside of a five-mile radius; but under no circumstances, according to good engineering advice, can such a radio station emit signals that will adequately and regularly serve a territory efficiently at a greater distance than fifteen miles from the point of operation.

This action was instituted by the Associated Press against Petitioner in the United States District Court for the Western District of Washington, Northern Division, for the purpose of securing injunctive relief against the alleged pirating of *published* and *distributed* news dispatches from three of its member newspapers, to-wit: The Seattle Post-Intelligencer of Seattle, Washington; The Seattle Times of Seattle, Washington; and the Bellingham Herald of Bellingham, Washington.

It is important at this stage to point out that Seattle is more than ninety miles away from Bellingham, Washington, and 75 miles away from the effective radius of the signals from Petitioner's Radio Station, and it was never claimed by Respondents, and in fact the District Court found (R. 511-512) that "in no instance has the defendant ever taken or pirated any of the news claimed by complainant or its members *before such news items were published and distributed* to the public in the regular editions of the newspapers of complainant members." (Italics ours.)

Petitioner repeats, at no time was it ever alleged or found that Petitioner took any news, if at all, from Respondents' member papers before they were published and regularly distributed in the regular course of their business, and it can be safely pre-

sumed that their publication and distribution had been completed in their respective localities many hours before they could possibly have reached *a point ninty miles distant.*

The District Court, upon the Bill of Complaint and Affidavits of Respondent, and upon an exparte showing, issued a Temporary Restraining Order against Petitioner and an Order to Show Cause why the injunctive relief requested by Respondent should not be granted (R. 37).

Upon the return to the Order to Show Cause, the Petitioner filed a Motion to Dismiss supported by Affidavits (R. 42-45-60). At the hearing it was conclusively shown by Petitioner that the Associated Press sold no advertising and that the Petitioner and Respondent were not in any sense of the word in competition with each other. In fact, Respondent in its written brief in the Circuit Court of Appeals, at Page 10, stated that the Associated Press—"makes no profits and, as a distinct entity, is not deprived of any profits by the piracy of its news items."

The District Court, after such hearing and argument, took the matter under advisement and subsequently rendered its written opinion dismissing the Bill (R. 465).

The District Court found that Petitioner and Respondent were not in competition; that while the

Petitioner has *"in some specific instances"* (R 511) broadcast news taken from said member newspapers, the Court added—

> "**in no instance has the defendant ever taken or pirated any of the news claimed by complainant or its members, before any such news items *were published* and *distributed* to the public the regular editions of the newspapers of complainant members." (R. 511) (Italics ours.)

The District Court found that no unfair competition was practiced against the Associated Press, and that the actions of Petitioner were no more than was customary with the ordinary newspaper rewriting and publishing from other *published and distributed newspapers* with full propriety under the law. The District Court premised its decision in this respect upon the authority of a legal textbook, "The Rights and Privileges of the Press" wherein on page 87, it is set forth:

> "Whether an afternoon newspaper may lift from a morning paper has never been decided by the courts, but the *custom* of the profession *seems to sanction* such practice." (Italics ours.) (R. 477).

Petitioner emphasizes that a controlling analogy is thus created between an afternoon newspaper and a morning paper, as cited, and two newspapers and a small 100-watt radio station *ninety miles away*.

The District Court further found that respondent had no property right in news *after* it had been so *published* and *delivered* to the public in the ordinary course of distribution as against the right of Petitioner's radio station to redistribute said news without direct profit and gratuitously to the public. *and as long as said radio station did not resell it* as a news gathering agency of the same type and character as respondents. (R. 489).

The District Court found that Petitioner did not "ever derive any profit, either direct or nominal therefrom." (*R.* 512). The District Court further found that the case of International News Service vs. Associated Press, 248 U. S. 215, did not apply to the case at bar as that was a contest between two news gathering agencies in the keenest of competition with each other over the gathering and distribution of news *before distribution.* (R. 484).

Petitioner can more clearly set forth the remainder of the facts in this Petition by quoting specifically a portion of the District Court's decision, as this case chiefly involves important questions of law:

> "***This court holds that when general news furnished by complainant, or local news claimed to be under its control as regards publication, *has been printed in a regular issue of complainant's member newspapers and that is-*

sue has been, in the ordinary course, published and distributed to the public, such news reports from that moment belong to the public, including the defendant and all others who may desire to use them, for all purposes except for sale by a rival news agency to its news publishing members, and that the mere fact that defendant disseminates gratuitously those news reports as a part of its radio service after they have been so received by defendant contemporaneously with other members of the public, does not prevent defendant from so receiving and using such news reports, since such practice by defendant *does not involve the pirating by one news gathering and distributing agency of news reports of another such agency, as was the case in International News Service vs. Associated Press, supra.*" (Italics ours) (*R.* 489).

Feeling aggrieved at the District Court's ruling, Respondent appealed said ruling to the Circuit Court of Appeals for the Ninth Circuit. The Circuit Court rendered its decision on December 16th, 1935, reversing the decision of the District Court (*R.* 556).

The Circuit Court completely and erroneously ignored the Findings of Fact of the District Court who tried the case and was acquainted more clearly with the facts and circumstances of the parties. The Circuit Court ordered the District Court to issue a vaguely outlined preliminary injunction restraining Petitioner from appropriating and broadcasting any of the news gathered by Respondent for the period following its *publication in* Respondent's

newspapers (although Respondent owns no newspapers) during which time the broadcasting of the pirated news to Petitioner's most remote auditors may damage the Respondent's papers' business of procuring or maintaining their subscriptions and advertising. In this connection, the Circuit Court ordered consideration should be given to the likelihood of KVOS' auditors awaiting the pirated news because it is free and does not require subscription for a newspaper. (R. 581).

The chimera of Respondent's solicitude for the advertising and subscriptions to its member newspapers reared its head seriously for the first time in the Circuit Court of Appeals. In order to establish unfair competition, this element was belatedly injected into the case, although Petitioner cannot refrain from again pointing out that on Page 10 of Respondent's brief in the Circuit Court of Appeals, Respondent stated, and never claimed improvidently, that the Associated Press "makes no profits and, as a distinct entity, is not deprived of any profits by the piracy of its news items."

If not, and no harm or damage has been suffered by Respondent, then how can they maintain this action.

Thus we approach the questions presented by this Petition:

THE QUESTIONS PRESENTED ARE AS FOLLOWS:

1. Can the Associated Press, the Respondent, not being harmed or losing any profit by its own admission, maintain this equitable action for injunctive relief where irreparable harm and damage to the complainant are necessary and vital elements in such an action? If the Associated Press, admittedly a foreign corporation to the State of Washington, loses no money or profit by Petitioner's alleged piracy, how can the jurisdictional sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, be involved in this case, and Federal jurisdiction maintained? Diversity of citizenship, standing alone, cannot satisfy the requisites of Federal jurisdiction. The matter in controversy must exceed Three Thousand ($3,000.00) Dollars, exclusive of interest and costs. How can this be consistently maintained by Respondent in the face of its own admission that the Associated Press is not deprived of any profits by the piracy of its news items?"

2. Even though the Respondent is a foreign corporation to the State of Washington and enjoys diverse citizenship, yet the Respondent is not the real party in interest in this cause, and if necessary parties have been omitted, and their joinder would destroy complete diversity, should not the cause be dismissed?

3. Is a small 100-watt Radio Station, using only ten per cent of its total time for news broadcasting and the remaining ninety per cent of its time for other programs, in such competition with the Respondent news gathering agency, who do not solicit advertising or subscriptions, as will sustain this action for unfair competition? Especially, in view of this Court's ruling in

International Shoe Co. vs. Federal Trade Comsion (1929) 280 U. S. 291, wherein it was said:

> "Thus it appears that in respect to 95% of the business, there was no competition in fact and no contest, or observed tendency to contest in the market for the same purchasers; and it is manifest that when this is eliminated, *what remains is of such slight consquence as to deprive the finding that there was substantial competition between the two corporations of any real support in the evidence.*" (Italics ours).

4. Since the Federal Courts have invariably held that a newspaper is not capable of being copyrighted, and that the common law rights in news ends at the point of publication, and that the courts have no judicial authority or right to place a judicial copyright on *published* and *distributed* news, what property or equitable rights, if any, remain in the *published* and *distributed* news in this action so as to justify the intervention of a Court of Equity?

Equity will protect news as long as it remains confidential, or to the point of publication as in the International News Service Case, *but no further*. The International News Service Case, supra, did not establish a property right in news. That case turned upon the question of unfair competition. Justice Pitney, delivering the majority opinion, on page 234, stated:

> *"It is not to be supposed* that the framers of the Constitution, when they empowered Congress to promote the progress of science and the useful arts, by securing for limited time to authors and inventors the exclusive right to their respective writings and discoveries (Const. Art. 1, Section 8, paragraph 8) *intended to confer upon one who might happen to be the first to report a*

historic event, the exclusive right for any period to spread the knowledge of it —

"We need spend no time, however, *upon the general question of property in news matter* at common law, or the application of the Copyright Act, *since it seems to us the case must turn upon the question of unfair competition in business.*" (Italics ours).

But, in this action the tables are turned. There is no competition. Whatever rights Respondents have must be established upon showing a remaining property right in *published* and *distributed* news. The question is thus placed squarely before the Court. *What rights remain, if any, in published and distributed news?*

There has been no stealth or unfair conduct. The news items had not acquired any "secondary meaning." There was nothing distinctive or novel about them. They were not obtained unfairly. The German case hereinafter relied upon by Petitioner, stated that the test is—*whether the items were received unfairly.*

In the International News Service case they were obtained unfairly, without question. Here they were not. The Respondents did not allege that the papers were acquired other than by being purchased, if used, on the street. Is not news thus acquired common property, and as Justice Pitney

negatively stated in the International News Service case (supra), *is it to be supposed that the framers of our Constitution intended to confer upon one who might happen to be the first to report a historic event, the exclusive right for any period to spread the knowledge of it?* Then too, in view of radio distributing the same gratuitously to the listener who neither pays tax nor toll, can the public service thus rendered without direct or even remote profit to Petitioner be distorted into an act based on unfairness? *If there is a remaining property right in such news, how long does it last? Is not that a question for the Congress?*

REASONS FOR ALLOWANCE OF THE WRIT

I. The decision of the Circuit Court of Appeals is contrary to the settled judicial practices of many years. It is axiomatic, and the rule has almost become a maxim in settled equitable procedure, that irreparable harm and damage must be affirmatively shown in order to justify the intervention of a Court of Equity, or to grant injunctive relief. The Circuit Court ignored this plain rule. The decision of the Circuit Court completely ignored the District Court's findings of fact, who was on the ground, so to speak. The Circuit Court ignored the rule that the right of a litigant to injunctive re-

lief must stand or fall upon the sufficiency of the averments in the Bill of Complaint showing the existence of such special and extraordinary circumstances as are sufficient to bring the case within some acknowledged head of equity jurisdiction. The sufficiency of the bill was challenged. It was urged that the bill set forth no facts, which, if true, would entitle Respondent to the relief prayed for in a Court of Equity, or to any injunctive relief in this cause. In view of these considerations, the District Court denied Respondent's Motion for a Preliminary Injunction. In positive disregard of the District Court's Findings, and notwithstanding Respondent's naked admission that it suffered no harm as a consequence of Petitioner's actions, the Circuit Court erroneously reversed the decision of the District Court.

II. The decision of the Circuit Court resorts to speculation, vague and remote allegations in the Bill of Complaint and Affidavits, in finding the jurisdictional amount of the matter in controversy exceeds Three Thousand ($3,000.00) Dollars, exclusive of interest and costs.

III. That the issues presented by the Circuit Court's erroneous decision present a new and novel question of great moment to the public, to radio broadcasting stations in this nation, and to news-

paper publishers and publishing associations. That the Circuit Court has erroneously and improvidently usurped the functions of Congress in granting Respondent relief in this case. Only Congress can grant such relief. The Circuit Court has legislated, so to speak, on a question *refused* by the First Session of the 48th Congress as early as 1884, when the Senate Committee on the Library reported that Senate Bill No. 1728, which gave published news *eight hours* protection, should not pass. In the case at bar, the District Court was compelled by the Circuit Court to give the Respondent 18 *hours* protection for its published news. (See Appendix "A" for Preliminary Injunction, and Appendix "B" for Petitioner's Proposed Preliminary Injunction which was refused.)

IV. The decision of the Circuit Court that the parties hereto are in competition with each other is contrary to and in direct conflict with the facts of this case, and the opinions of this Court in Raladam Co. vs. Federal Trade Commission, 283 U. S. 643, wherein this Court substantiated the rule that plain logic and sense decrees there should be some *real competition* in an unfair competition case. Unfair competition presupposes the existence of some substantial competition. No such competition can be supported by the facts of this case wherein only

ten per cent of Petitioner's business is engaged in giving news items away. At no time has Petitioner made merchandise of news items. Petitioner deals with the public while Respondent deals with a trade. Whether the term unfair competition is used in conjunction with the Statutes or common law, the term cannot be emasculated, circumvented by hair-lines, or so blindly applied as to justify a decision that Petitioner and Respondent are in competition with each other; or that there was unfair competition; especially so, since there has been no misappropriation. Indeed, the question and test is, *was the news received unfairly?* If not, there was no misappropriation and therefore no unfair competition. In the absence of averments of bribery or dishonest conduct as in the International News Service case (supra), it must be presumed that Petitioner received this news fairly and without fraud—namely, by purchase. That is the distinction between the International News Service Case and the case at bar. Dishonesty, in fact, was proved in that case. That element is missing in this case.

In this connection, we call this Court's attention to a case decided by the Supreme Court of Germany, April 29th, 1930, reported in "Journal of Air Law" 1931, Volume II, at page 63, and translated by Carl Zollman of the Marquette University Law School

faculty. In that case, the "tables were turned" from the facts at bar. A newspaper published and distributed gratuitiously an item about the successful landing of the Graf Zeppelin on its return from America which the newspaper received over the radio. In denying an injunction to the radio station based on unfair competition the Court held:

> "**It is not shown that the republication of the news item from the broadcast — as is here contended — by defendant in his newspaper is against public policy — "

The German Supreme Court called attention to the press convention at Geneva, August, 1927, and, stated—

> "**the experts there assembled were unable to reach an agreement in regard to the question of public policy, but were rigidly divided. The result was that merely the principle was agreed to *"that the publication of any news items is dependent on only one condition, namely, that the item should have been received by its publisher rightfully and not through unfair competition."* The intermediate Court again stresses the fact that defendant is an authorized subscriber (radio listeners pay a fee in Germany just like a purchaser of a paper pays a fee in America) and *has received the news rightfully."* (Italics and note ours).

In the case at bar, Petitioner received the news *rightfully*. We reiterate, that it is not alleged that Petitioner received the newpapers other than by

paying for them. It is not alleged that they were received wrongfully or through dishonest sources. Thus, since there has has been no public policy contravened by Petitioner's actions, nor misappropriation, nor property rights violated (because the International News Service Case (supra) expressly stated that the Court was not declaring any property right in news, as such) the test of whether there has been unfair competition must be gauged and confined solely to determining whether any actual competition exists in fact between the parties hereto.

In this respect, the Circuit Court's decision conflicts with this Court's decision in International Shoe Company vs. Federal Trade Commission (220 U. S. 291). We repeat, that only ten per cent of Petitioner's time is devoted to giving away news items. We quote from the International Shoe Case (supra):

> "Thus it appears that in respect to 95% of the business, there was no competition in fact and no contest, or observed tendency to contest in the market for the same purchasers; and it is manifest that when this is eliminated, *what remains is of such slight consequence as to deprive the findings that there was substantial competition between the two corporations of any real support in the evidence.*" (Italics ours.)

There can be no unfair competition when there is no competition. Borden Ice Cream Co. vs. Borden Condensed Milk Company, (201 Fed. 510).

Then too, we must remember that Petitioner's Radio signals cannot be heard in Seattle, ninety miles away. There is no competition between Petitioner and the Seattle Times or Seattle Post-Intelligencer. In regard to the local paper, the Bellingham Herald, the Circuit Court's own findings state the number of news items taken after publication and distribution of the paper *are but twelve* (R. 579) *in number over the course of a year.* (R. 27).

If the local paper was damaged, they should have brought the suit and their joinder would have destroyed diversity. The Seattle Times and Seattle Post-Intelligencer are presumed to have been distributed if they are received at a point ninety miles away from their point of publication. This leaves only twelve items. Their appropriation was vigorously denied by Petitioner (R. 45). *Twelve fugitive news items are too few with which to stigmatize Petitioner in a Court of Equity.*

An injunction should never issue when the damage it would cause would be relatively greater in comparison with the damage caused the Respondent by the thing sought to be enjoined. Waters vs. Phillips (284 Fed. 237); Cubbins vs. Mississippi River Commission et al, (204 Fed. 299); Kryptok Co. vs. Stead

Lens Co. (190 Fed. 767); Swift vs. Jenks (19 Fed. 641). Especially is this rule true where it is sought to enjoin a lawful business. McCarthy vs. Bunker Hill Co. (164 Fed. 927).

A fundamental rule applied by this Court is that an injunction will not be granted except in a case *reasonably free from doubt.* Exparte Young (209 U. S. 123). Then too, mere apprehension or fear does not warrant an injunction. Farmers Bank vs. Commissioners (295 Fed. 755).

V. The question is an important one to be decided by this Court. The Circuit Court has grossly misconstrued this Court's ruling in the case of International News Service vs. Associated Press (248 U. S. 215). The Circuit Court's attempt to apply the principles of that decision to the facts at bar is in direct conflict with subsequent decisions of this Court. This Court stated in Reichelderfer vs. Quinn (287 U. S. 315):

> "**Beyond the traditional boundaries under common law only some imperative justification in policy will lead the Courts to recognize in old values new property rights. *Compare* International News Service vs. Associated Press 248 U. S. 215, with Cheney Brothers vs. Doris Silk Corporation, 35 Fed. (2nd) 279."

Judge Hand, in the Cheney Brothers' case (supra) stated that the language in the International News

Service case (supra) would be limited to the actual facts as were therein involved. This Court distinctly approved this limitation of the International News Service Case (supra) as is seen by the above quotation from the Reichelderfer case (Supra). It is to be remembered that Judge Hand in the Cheney Brothers' case (supra) denied an injunction against defendant where the evidence showed defendant had been copying silk patterns under the theory that the Courts had no right or authority to deal out Judicial Copyrights. Judge Hand held that although the International News Service case (supra) involved another subject, he agreed that if that decision meant to lay down a general doctrine of unfair competition, it would be controlling of the case before him, but he stated emphatically:

> "*We do not believe it did.* While it is, of course, true that law *ordinarily* speaks in general terms, there are cases *where the occasion is at once the justification for, and limit of, what is decided. This appears to us such an instance;* we think that no more was covered than situations substantially similar to those at bar. The difficulties of understanding it otherwise are insuperable. We are to suppose that the court meant to create a sort of Common Law patent or copyright for reasons of justice. Either would flagrantly conflict with the scheme which Congress has for more than a century devised to cover the subject matter." (Meaning the Copyright Law). (Italics and notation ours).

The Reichelderfer Case (supra) very plainly and

impliedly approved, Judge Hand's limitation of the language of the International News Service case, and rightly so. To apply that case rigidly to the facts at bar, as did the Circuit Court of Appeals, is resorting to legislation, and under the Constitution, Art. I, Section 8, Paragraph 8, Congress only, is empowered —

> " — to promote the progress of science and useful arts, by securing for a limited time to authors and inventors the exclusive right to their respective writings and discoveries."

This Court recognized in the International News Service case (supra) that there is no property right in published news. While there could be unfair competition in dealing with it where dishonesty is shown, this Court did not affirm any property right in news as such. In the case at bar, Petitioner received the news *rightfully* and did not misappropriate or dishonestly acquire it. The way Petitioner received it was not against public policy. Since there is no actual competition existing between Petitioner and Respondent, that element of the Circuit Court's decision is groundless and unsound. The only legal way the Circuit Court's decision can be sustained, is for this Court to declare a remaining property right in news, as such, in the face of the following quotation on page 234 of the majority opinion in the International News Service case

(supra):

> "It is not to be supposed that the framers of the Constitution intended to confer upon one who might happen to be the first to report a historic event the exclusive right for any period to spread the knowledge of it.***
>
> "We need spend no time, however, *upon the general question of property in news matter at common law,* or the application of the Copyright Act, *since it seems to us the case must turn upon the question of unfair competition in business.*" (Italics ours.)

As stated, in order to sustain the Circuit Court's decision this Court is called upon to affirm a general and absolute property right in published and distributed news, as such. Thus, the issue is important, novel and momentous. It is of great importance to the public that this matter should be decided by this Court. In addition thereto, the peculiar circumstances that have arisen since the date that the International News Service case was decided, justify a further inquiry into this particular subject matter. Today, but not then, we have the radio. Tomorrow, it will be television with its facsimile portrayal of readable news items, together with a picture of the actual event, just after or contemporaneously with its happening. This Court should declare once and for all that this subject matter, as herein meagerly outlined, is a matter for Congress

and only a limited one for the Courts of the land. It is of vital importance to the public to know whether the principles of the International News Service case, (Supra) are to be limited to the facts as were therein involved; and whether this Court will countenance a Circuit Court taking a doubtful step towards legislation and concluding that the facts of this case are within those principles, which as aforesaid, were enunciated at a time when radio and its functions were never contemplated. At least, and if for no other reason than that Petitioner operates under a certificate issued by the government, conditional upon Petitioner serving the public interest, convenience, and necessity, Petitioner most emphatically urges that its pride in its past and present service to the public interest should not be stigmatized or impugned without an opportunity to be heard in this, the highest court in the land.

WHEREFORE, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this court for its review and determination on a day certain to be therein named, a full and complete transcript of the record of all proceedings in

Case No. 7798 in said court, and entitled "The Associated Press, a corporation, Appellant, vs. KVOS, Inc., a corporation, Appellee," and that said decree of the United States Circuit Court of Appeals for the Ninth Circuit be reversed by this Honorable Court and that your Petitioner may have such other and further relief in the premises as to this court may seem meet and just.

CLARENCE C. DILL,
Bowen Building,
Washington, D. C.

KENNETH C. DAVIS,
Northern Life Tower,
Seattle, Washington.

WILLIAM H. PEMBERTON,
Olympia, Washington.

Attorneys for Petitioner.

CERTIFICATE OF COUNSEL

UNITED STATES OF AMERICA,
CITY OF WASHINGTON,
DISTRICT OF COLUMBIA } ss.

CLARENCE C. DILL, being first duly sworn on oath deposes and says: That he is an attorney at law admitted to practice before the Supreme Court of the United States; that he is one of the attorneys for

the Petitioner in the above entitled cause. That he prepared the foregoing petition in good faith and not for delay. That said petition in his opinion is meritorious and well founded in law. That he has read said petition, knows the contents thereof, and believes the same to be true.

CLARENCE C. DILL,

SUBSCRIBED and SWORN to before this 18th day of March, 1936.

R. McQUESTEN,

NOTARY PUBLIC in and for the District of Columbia.
Commission expires January 24th, 1940.

No. .....

Supreme Court of the United States

OCTOBER TERM, 1935

KVOS, INC., a corporation,

Petitioner,

vs.

ASSOCIATED PRESS, a corporation,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Proceedings in the District Court and Court of Appeals

The hearing on the return to the Order to Show Cause issued in this case occurred December 3rd, 1934, before the United District Court for the Western District of Washington, Northern Division. Taking the matter under advisement the District Court on December 18, 1934, filed a memorandum decision denying the Respondent's motion for a preliminary injunction and sustained petitioner's motion to dismiss. (R. 465). The District Court entered its findings of fact (R. 508) and conclusions of law (R. 514) on the 28th day of January, 1935. The District Court entered the decree of dismissal (R. 516) on the 28th day of January, 1935. From this decree of dismissal, respondent appealed to

the United States Circuit Court of Appeals for the Ninth Circuit. The cause was argued before the United States Circuit Court of Appeals for the Ninth Circuit on the 13th day of September, 1935, (R. 555). On the 16th day of December, 1935, the Circuit Court of Appeals filed its opinion reversing the decision of the lower court (R. 556). This petition is to review said decision and judgment of the Circuit Court of Appeals.

JURISDICTION

Jurisdiction of this court is invoked under Judicial Code Section 240 (a) as amended by Act of February 13, 1925, Chapter 229 (43 Stat., 938; 28 U. S. C. A. 347).

Upon application of petitioner, for good cause shown, the period for applying for a Writ of Certiorari in this cause was extended by Mr. Justice Sutherland on March 7, 1936, for thirty days, pursuant to Title 28, U. S. Code Annotated, Section 350. This order was entered prior to the expiration of ninety days from the entry of judgment by the Circuit Court of Appeals (December 16, 1935) (R. 555). No petition for rehearing was filed.

Petitioner asks that its Petition for a Writ be granted under and by reason of the provision of the United States Supreme Court, Rule 35, Section 4, Sub-section B, in that, the Circuit Court of Ap-

peals has erroneously decided an important question of general law in a way untenable and in conflict with the weight of authority and in conflict with the decisions of this Court.

STATEMENT OF THE CASE

The allegations of Respondent's Bill of Complaint substantially sets forth, that Respondent is a news gathering agency, and that after its alleged members have published the said news reports, furnished by Respondent, the Petitioner assertedly purchased copies of these newspapers and proceeded to read to its radio audience, gratuitously, the most interesting of these items of news. (R. 2.)

There is no allegation in the Bill of Complaint that the Petitioner received profit, using the word literally, from so broadcasting these news items; nor is there any allegation that the Petitioner charges any of its listeners any consideration for this service. The only "profit" which the Respondent alleges that the Petitioner receives from so broadcasting these news items is, quoting from paragraph 11, Line 28, of Respondent's Bill: (R. 9):

> "That the object and purpose of said news broadcasts by the Defendant over said KVOS, is to popularize said radio station, by making said program interesting through news broadcasts, and thereby to induce a greater number of persons to listen to said programs, thereby enhancing the value of time of said broadcasting sta-

tion for such advertising purposes."

It is thus seen that the respondents are making an effort to come within the province of International News Service vs. Associated Press, (248 U. S. 215), and those copyright cases dealing with a statutory right to compensation for a public performance for profit of a copyright. These cases will be reviewed in detail hereinafter, and their inapplicability to the facts at bar will be manifest and apparent at a glance.

Assuming, for the purpose of argument, that the Respondent's allegations are true, yet, Petitioner contends, they are not sufficient nor do they contain any grounds to justify the intervention of a Court of Equity. *They fall entirely within the scope of the power of the Congress and are wholly without the jurisdiction of any Court of Equity.*

It must be borne in mind that this case does not involve a question on copyright law, nor is there any alleged infringement of an article protected by Statute. On the contrary, the Respondent is basing its cause of action entirely upon the common law equitable action of unfair competition.

SPECIFICATIONS OF ERROR

The Circuit Court of Appeals erred in reversing the decision of the District Court because:

1. There was no evidence to support a finding that the matter in controversy exceeded the sum of ($3,000.00) Dollars, exclusive of interest and costs.

2. The facts demonstrate conclusively that the Associated Press is not the real party in interest in this cause, and the joinder of the real parties in interests would have completely destroyed diversity of citizenship.

3. The District Court was right in holding that the Respondent's Bill of Complaint did not contain sufficient averments showing the existence of such special and extraordinary circumstances as are sufficient to bring the case within some acknowledged head of equitable jurisdiction, and that the bill, as pleaded, did not entitle respondent to the relief prayed for.

ARGUMENT

This argument is devoted entirely to the third specification of error. It would be absurd to request this Court to pass on the merits of this case twice. We understand the law to be that on certiorari, the petition should appeal to the court's discretion. For this petition, Petitioner will confine itself to the proposition that Respondent's Bill of Complaint did not recite sufficient facts to justify the intervention of a Court of Equity; that there was no un-

fair competition, and that in this case, there is no remaining property right in the published and distributed news as will sustain the decision of the Circuit Court of Appeals.

Respondent seemingly finds great solace in the case of Herbert vs. Shanley, 242 U. S. 591, where this Court defined a public performance for profit in a copyright case. The Circuit Court of Appeals erroneously adopted this ruling *on a statutory right* as the answer *to a common law right,* if any. The legal distinction between a *statutory right* and a *common law right* was ignored. The wrong charged in Herbert vs. Shanley (supra) was the infringement of a *statutory* copyright by the public performance of a musical composition. The Circuit Court recognizing the difference in the wrong charged *in that case* and the wrong charged *in the case at Bar,* stated nevertheless (R. 572-573):

> "**The difference in the wrong charged does not distinguish a ruling on the excuse for the wrong."

Such a statement is not only unreasonable, but improvidently made. A right based upon a statute and its attendant ruling is not controlling of a *claimed* right under the common law. At common law the rights in news ended at publication. At common law, a right claimed under a statute, *may not have*

been wrong. To rule otherwise, what need would there be for the legislature? The Court would be doing the legislating. Under the Common law, the Plaintiff in the Shanley case should not have recovered. His right was based on the Copyright Act.

The reasoning in the Shanley case should be considered, if it is going to be considered at all in this case, with the following statement about broadcasting in America from the textbook "The Law of Radio Communication," at page 5:

> "***American broadcasting is distinguished from all other forms of communication in that those who enjoy its service make no direct payment for if. The listener pays neither toll nor tax. The entire maintenance of broadcasting is gratuitious so far as the listener is concerned.* This is not true in other countries. Broadcasting abroad is financed upon the principle that those who receive should pay. Great Britain, second only to the United States in broadcasting development, imposes a tax in the form of a license upon receiving sets, and the operating expense is paid from the proceeds. Other countries have similar systems. In America alone is the operation of a receiving set open to everyone without tax or payment, and in no other land is the service so extensive or so efficient." (Italics ours.)

We are, frankly, attempting to impress the Court with the seriousness of this case and the public interest involved. Newspaper and radio activities are clothed in the public interest. When a newspaper

or a radio station submit their news or programs to the public voluntarily, they must be deemed to have reasonably and voluntarily dedicated their property to *public use*. They have not been *compelled* to do so. Devotion of property to public use, is a *voluntary act*. It may not be compelled. However, when one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to the control of the public, the Courts, and the legislature, for the common good.

There are no decisions in the United States directly and distinctly applicable to the case at bar. The decisions recited by the Respondent in the Circuit Court are ridiculously inapplicable.

However, the Supreme Court of Germany decided a recent case squarely against complainant's contention and which fits the facts at bar as perfectly as could any decision of any Court of competent jurisdiction in the world. This opinion was handed down by the Supreme Court of Germany, April 29, 1930, and is reported in the "Journal of Air Law" 1931, Vol. II, at page 63. This opinion was translated by Carl Zollman of the Marquette University Law School faculty.

The facts in that case are substantially the same

as the facts alleged by respondent in its Bill of Complaint with this exception—*it was a German newspaper that was alleged to have pirated news items from the news programs of a radio broadcasting station.*

The Defendant in this case was the publisher of the "Neuse Tageblatt Oebisfelde," a newspaper appearing in the City of Oebisfelde. On November 1st, 1928, at 7:30 a. m., Defendant distributed without charge and publicity posted a newspaper announcing the successful landing of the airship "Graf Zeppelin" after its historical flight to America.

The Plaintiff was a German broadcasting station, and their listeners, unlike the radio listeners of America, are licensed and pay a consideration therefor, just as the purchasers of newspapers in America. The Plaintiff broadcasting company had sent an announcer to Friedrichshafen to report and broadcast the news of the successful landing of the "Graf Zeppelin". Immediately after the radio had made this news announcement, the Defendant got out his "extra" and gratuitiously distributed it. The Plaintiff broadcasting company alleged that the Defendant had first learned of this news over his radio receiving set from the Plaintiff's broadcasting station, *and that the Defendant's newspaper had on previous instances made similar use of information*

received in that manner. The Plaintiff asked the Court to enjoin the Defendant from publishing the news items which he received from the Plaintiff broadcasting station.

The lower court, and an intermediate court, gave judgment for the Defendant and refused to so enjoin the newspaper. This judgment was affirmed by the Supreme Court of Germany, *even though the Plaintiff's allegations that the defendant had first received the news from the broadcasting station, were found to be true.*

It must be borne in mind that the Defendant in that case paid for his license to listen on the radio. It must also be remembered, and we repeat, *that the Petitioner in the case at bar is presumed to have purchased the newspaper it is alleged to have read to its audience.* The Defendant in the German case and the Petitioner in this case, stand in identical positions, according to the allegations of Respondent's Bill of Complaint.

We quote only the pertinent sections of this lengthy opinion of the Supreme Court of Germany for the convenience of this Court because the opinion can be obtained in the report as aforesaid:

> "—it is not shown that the republication of the news item from the broadcast—as is here contended by defendant in his newspaper *is*

against public policy. The court admits that such an offense generally exists when one appropriates the result of the arduous and expensive labor of others without substantial expense of time, work and money and for the purpose of competition. It is inclined to agree with a case decided by a trial court of Berlin and affirmed by the intermediate court (JW. 1929, 1251 and Arch. F. Funkr. 1, 666) according to which it was a violation against section 1 Un1WG. for a subscriber to appropriate and utilize for business purposes the description of the last round of a prize fight between two well known boxers by a sport reporter who was present at the ringside, and who broadcast his description from the ringside. In the present case however the intermediate court declines in contradistinction to the prize fight case to see anything against public policy because here the whole transaction is not reproduced but only a news item is involved even though it be a very fast one. But this quality is possessed inherently by all radio news items as compared with news appearing in a paper which must be printed before it can be circulated. *It declines to see in the utilization of the news through immediate publication in an extra distributed without cost anything which is against public policy.* (Italics ours.) — —

"—In consequence the intermediate court refused to see any violation of section 2 Un1WG, and section 826 BGB and dismissed the complaint after showing that when the question was discussed at the press convention of Geneva on August, 1927 (Bl. f. Funkr., Heft 10 of October, 1927, 179ff.) the experts there assembled were unable to reach an agreement in regard to the question of public policy but were rigidly divided. The result was that merely the principle was agreed to "*that the publication of any news*

item is dependent on only one condition, namely that the item should have been received by its publisher rightfully and not through unfair competition. The intermediate court again stresses the fact that Defendant as an authorized subscriber has received the news rightfully.

Appellant contends that this reasoning is wrong. It urges that the above related case JW 1929, 1251 is to be followed. In that case a phonograph record of a broadcast address made without the license of the sending company was in question. It says that the appropriation of a result obtained by great trouble and expense by others for the purpose of the use of the appropriator in his competition with others is here present through the printing of the extra. The cost of the effort was not only high in general but was greater than usual here because a special reporter was sent to Friedrichshafen and was connected with the Stuttgart station by a special wire. It further contends that defendant by designating his news item as a telegram made it appear to the public as if it had through special organization and special expense of money succeeded in getting this news in a particularly expeditious manner. As against the holding that public policy is not violated plaintiff claims that the provisions of the license, on which the intermediate court relies, have not penetrated into the sphere of general knowledge particularly because it is partly of a technical nature. It claims that the general opinion of the subscribers is that they are not entitled to utilize the broadcast in any manner. It further contends that the disquisitions of the intermediate court in regard to the deliberations of the press convention of Geneva in August, 1927, are erroneous so far as part B of the resolutions are concerned which declares that it is under all circumstances desirable that

news items published by radio be protected in such a manner that the publication of such news items during a certain time is legitimate only on condition of mentioning the source and paying a fee.

This much of this contention is true that the resolution formulated by the Press convention of Geneva is not limited to the principle stated by the intermediate court. Apparently only a general principle was involved which the convention was desirous to stress and which was to precede the proposed regulation for cases A and B (unpublished news, published news) though clarity of purpose was sacrificed.

The sentence stressed by the intermediate court is found in the resolution concerning the regulation of the relevant case B (published news). Whether the general principle announced before the treatment of cases A and B, that the "principle that the publication of any news should refer also to case B is despite the general word "publication" which is not confined to the first publication is at least doubtful. This point however need not be discussed since the purpose of convening the conference was to bring about the regulation of the protection of the news service on the basis of an international treaty. The negotiations therefore do not present any basis for an already existing protection of the news service according to German law.

It remains to examine whether the presumptions of Section 3 UnlWG., which appellant apparently contends is applicable because defendant by labelling the news as a telegram has made it appear that he obtained this news especially and expeditiously through some special organization, must be eliminated as there is no finding of fact and the plaintiff has not made any assertions in this regard.

We cannot agree with the appellant that the principles of the above mentioned decision (JW 1921, 1251) are applicable without more. There can be no doubt but that the utilization of a broadcast by reproducing it on phonograph records and thus taking permanent possession of it commercially, as was done in that case, is contrary to section 1 UnlWG. and section 826 BGB. Such conduct is inconsistent with the views of decency in commercial affairs. An unscrupulous utilization of another's production, the result of great effort and cost, through mere mechanical means in a manner which has the same effect without any improvement and without any addition of any kind is involved. No attempt is present to perfect anything which might protect the attempt from being designated unfair competition. For all progress in culture, particularly in technical matters, is based on the existing achievements and is in fact a further development of them. Furthermore an entire reproduction the result of independent work on the part of the sending company is involved which is entitled to protection against unfair practices just as is the case in regard to any accomplishment or goods so far as it is not entitled to more complete protection. Such more complete protection is imaginable on the basis of an absolute right of the sending companies against the whole world, a violation of which by a third person would be forbidden even though his action is not wrongful. Such legal principle as applied to radio waves however is connected with very great difficulties.

The situation is different in the present case, where, assuming the statements by the plaintiff to be true, there is only a single utilization of a broadcasted news item. Such a case is distinguishable from that just discussed. This is true even of a republication of news items from an-

other newspaper. Such republication is not a violation of any copyright (compare section 18 Abs. 3 LitUG. of June 19, 1901, and Art. 9 Abs. 3 of the revised treaty of Geneva). *Such items are not entitled to copyright***."* (Italics ours.)

"—**Only the utilization of a single news item is involved, though such item was of the intensest interest to the general public. This item had no value beyond the time when it became available and the utilization by defendant consisted merely of taking advantage of the expeditiousness of radio. The item by itself was not an accomplishment of the sending company, it was not the result of its independent labor but because in a few hours, in consequence of its publication in newspapers and extra, the general property of the entire German people. *It should be again pointed out that such items according to section 18 Abs. 3 LitUG. enjoy no copyright when they are contained in newspapers and there is no reason to apply a different rule to them when they are circulated through the radio.* Nor is any such theory indulged in the interested circles. This circumstance and the contents of section 1 of the license conditions issued to listeners and which are generally known and according to which the prohibition against utilization has no application to radio broadcasts, was of importance in deciding the question whether the defendant has acted against public opinion and was properly so considered by the intermediate court. *In accordance with the present condition of the law the complaint is without foundation and the appeal must be dismissed.*"—(Italics ours.)

This opinion clearly shows that the German Supreme Court was chiefly influenced by the fact that news reports, as such, were not protected by the

German Copyright Law. News reports are not protected under the American Copyright Law. At the Common Law, the rights in news ended at publication. The only test is, *was the news received rightfully?* In the case at bar and in the German case, it was. In the International News Service case, it was not, therefore, there was unfair competition.

The above decision of the German Supreme Court follows the reasoning of the majority opinion and the opinion of Mr. Justice Brandeis in the case of International News Service vs. Associated Press (supra), which case we now take up. The majority held there was no property right in published news as did the dissenting opinion. The cleavage of the Court occurred over the question of whether there was unfair competition.

In applying the simple test of the German case to the case at bar, the ruling in the International News Service case need not be disturbed. Here, the news was received *rightfully* and there was no unfair competition. Obviously, respondents have no remaining *property right* in the *published* and *distributed news.*

In the International News Service case, the facts as therein set forth are inapplicable to the case at bar. It was held, as stated, by a majority opinion, Mr. Justice Brandeis, dissenting, Justice Holmes and

Justice McKenna writing a separate opinion, that a cooperative association of newspapers organized for the gathering, distributing and publishing of news, may enjoin a rival news agency from making merchandise of and *selling*, (not giving away), as its own, news received by bribery and taken from the *bulletins* issued by the competitive association; and that as between rival news gathering and publishing agencies, no general and absolute property in news, as such, is essential to the right of such a news gathering and publishing agency to seek protection in a Court of Equity against such competition by a rival agency.

Thus, the distinction between that case and the case at bar is seen. As between two newspaper news gathering agencies, such as the International News Service and the Associated Press, the court held that the question did not turn or hinge upon whether news was property or not, but, the question hinged solely on *rival and unfair methods.* The element of bribery and other unfair methods are not alleged in the case at bar. *Petitioner received this news, or is presumed to have received it in the lack of averments to the contrary, by purchase.*

Therefore, in the case at bar, the question hinges upon *whether news remains the property of the publisher after its dedication and sale to the public,*

including petitioner, and not on unfair competition; and not on rival and unfair methods of collecting and selling news as merchandise because Petitioner does not sell its news to others for resale or distribution.

This Court treated the International News Service case entirely upon the question of *unfair competition in business.* In that case, both agencies sold the news. In the case at bar, the Petitioner is presumed to have purchased this news, and *gives it away* in the interest of public education and public information, in furtherance of the general obligation impressed by the government on radio stations to serve the public interest, convenience and necessity.

At this time, we point out that the government annually appropriates some fifty odd millions of dollars to cover the deficit of the post office department, which is caused by the Second-class postal privileges of newspapers. Respondents cannot, therefore, reasonably and consistently scoff at the public interest involved in this case as being short-sighted. The government, in the case of newspapers, spends millions of dollars in order to encourage a wider knowledge of public happenings, whereas, as in the present case, radio performs this same service freely and gladly.

So, newspapers and radio, by virtue of this government benevolence being enjoyed by both, cannot be heard to object too strenuously to the public enjoying a greater use of property which has not only being paid for by purchase and by subsidy, but, as aforesaid, has been voluntarily dedicated to public use. Both parties hereto, do not stand in the same shoes as ordinary private property owners. There is a quasi-public interest in both industries.

Examining the International News Service case more fully, we now quote and comment upon the separate opinions of Mr. Justice Holmes and Mr. Justice Brandeis in order to more clearly demonstrate the question in this case. We have quoted the majority opinion heretofore—

"Mr. Justice Holmes, dissenting

"When an uncopyrighted combination of words is published there is no general right to forbid other people repeating them — — in other words, there is no property in the combination or in the thoughts or facts that the words express. — —

"Property depends upon exclusion by law from interferenee, and a person is not excluded from using any combination of words merely because some one has used it before, even if it took labor and genius to make it. — — — But as, in my view, the only ground of complaint that can be recognized *without legislation* is the implied misstatement, it can be corrected

by stating the truth; and a suitable acknowledgment of the source is all that the plaintiff can require. I think that within the limits recognized by the decision of the Court the defendant should be enjoined from publishing news obtained from the Associated for —— hours after publication by the plaintiff *unless it gives express credit to the Associated Press.*" (Italics ours.)

"Mr. Justice Brandeis, dissenting."

"No question of statutory copyright is involved. The sole question for our consideration is this: Was the International News Service properly enjoined from using, or causing to be used gainfully, news of which it acquired knowledge by lawful means (namely, by reading publicly posted bulletins or papers purchased by it in the open market) merely because the news had been originally gathered by the Associated Press and continued to be of value to some of its members, or because it did not reveal the source from which it was acquired?

The "ticker" cases, the cases concerning literary and artistic compositions, and cases of unfair competition were relied upon in support of the injunction. But it is admitted that none of these cases affords a complete analogy with that before us. The question presented for decision is new, and it is important.

News is a report of recent occurrences. The business of the news agency is to gather systematically knowledge of such occurrence of interest and to distribute reports thereof. The Associated Press contended that knowledge so acquired is property, because it costs money and labor to produce and because it has value for which those who have it not are ready to pay;

that it remains property and is entitled to protection as long as it has commercial value as news; and that to protect it effectively, the defendant must be enjoined from making, or causing to be made, any gainful use of it while it retains such value. An essential element of individual property is the legal right to exclude others from enjoying it. If the property is private, the right of exclusion may be absolute; if the property is affected with a public interest, the right of exclusion is qualified. But the fact that a product of the mind has cost its producer money and labor, and has a value for which others are willing to pay, is not sufficient to ensure to it this legal attribute of property. The general rule of law is, that the noblest of human productions — — knowledge, truths ascertained conceptions, and ideas — — become, after voluntary communication to others, free as the air to common use. Upon these incorporeal productions the attribute of property is continued after such communication *only in certain classes of cases where public policy has seemed to demand it.* These exceptions are confined to productions which, in some degree, involve creation, invention, or discovery. But by no means all such are endowed with this attribute of property. The creations which are recognized as property by the common law are literary, dramatic, musical, and other artistic creations; and these have also protection under the copyright statutes." — — — (Italics ours.)

Mr. Justice Brandeis holds, in substance, that news is not property, *and the majority of the Court do not differ with him on this point, because the majority opinion rests upon the methods employed, rather than the property rights involved.*

Here, the tables are turned, because there were no

unfair methods used. The news was received rightfully and presumably by purchase, as in the German case. *In order for the Circuit Court's decision to be upheld, this Court must now establish an absolute property right in published and distributed news, as such——something that this Court refused to do in the International News Service case.*

Respondents rely likewise upon an unreported case of Associated Press vs. Sioux Falls Broadcasting Company, decided April 8th, 1933, by the United States District Court for the State of South Dakota. That case was similar to the one at bar, but the District Court in the case at bar, refused to follow it.

A lengthy criticism of this Sioux Falls case is reported in the "Air Law Review", Vol. 4, (1933) at P. 323. The most pertinent portions of this article reads, and it is premised on sound reasoning——:

"Unfair competition —— Broadcasting —— Injunctions —— News Dispatches

——Complainant, a New York Corporation, is engaged in the business of gathering news for newspapers who are its members. Defendant operates Radio Station KSOO and one of its regular features is the broadcasting of news items three times daily. These items are read verbatim over said radio station from newspapers who are members of complainant corporation. Complainant asked for an injunction to restrain defendant from pirating such news. Held, a

preliminary injunction granted. Complainant and its members have a property right in the news gathered by such complainant. Broadcasting such news constitutes unfair competition for which a court of equity will render a preliminary injunction, restraining the defendant from pirating or disseminating news gathered by complainant or its members for twenty-four hours after the first publication of said news in a newspaper which is a *member of complaint* corporation.

Though there were earlier cases dealing with premature publication of stock quotations and the like, (Board of Trade vs. Christie Grain & Stock Company, 198 U. S. 236 — (1904); Hunt vs. New York Cotton Exchange, 205 U. S. 322 (1907); National Telegraph News Co. vs. Western Union Telegraph Company (1902) 119 Federal 294) the question of actual news "Piracy" first arose in the case of Associated Press vs. International News Service (1918), 248 U. S. 215, In that case, a divided court (The majority opinion was written by Mr. Justice Pitney. Mr. Justice Holmes wrote a separate opinion to which Mr. Justice McKenna concurred. Mr. Justice Brandeis wrote the dissenting opinion. Mr. Justice Clark took no part in the consideration or decision of the case.) decided that news constitutes a quasi-property right, and that the pirating of news by one news agency from another, will be enjoined by equity as constituting "unfair competition'. Mr. Justice Brandeis in a strong dissenting opinion pointed out that to constitute unfair competition, fraud or force must be involved in the doing of the acts complained of, and the mere reprinting of news from a newspaper purchased in the open market involves neither fraud nor force. The basis for the majority opinion that this constitutes unfair competition, is that there is appropriation

without cost to itself of value created by the plaintiff. Mr. Justice Brandeis, dissenting, says at page 257, 258:

> "To appropriate and use for profit, knowledge and ideas produced by other men, without making compensation or even acknowledgment, may be inconsistent with a finer sense of propriety; but with the exception indicated above (inducing breach of trust in getting the information), the law has heretofore sanctioned the practice.— — The unfairness in competition which has hitherto been recognized by the law as a basis for relief, lay in the manner or means of conducting the business; and the manner or means held legally unfair, involves either fraud (passing off your articles as that of the competitor) or force (physical or moral coercion, or by inducing breaches of contract or of trust) or the doing of acts otherwise prohibited by law."

Mr. Justice Brandeis at page 248 says that the only ground for holding the defendant liable, is that by printing the news it impliedly states that it got it through its own efforts, and that if the defendant would acknowledge the source, plaintiff would have no cause for complaint. He says:

> "But as, in my view, the only ground of complaint that can be recognized *without legislation* is the implied misstatement, it can be corrected by stating the truth; and a suitable acknowledgment of the source is all that the plaintiff can require."

The present decision (Sioux Falls Case) follows

the majority opinion of the United States Supreme Court in the International News Service Case, although it would seem that the wiser policy would have been to follow the dissenting opinion in this case at least. The broadcasting station is not really as much of a competitor as another news agency. People do not buy a newspaper merely for the news it contains. They purchase a paper for all its features of which the news items are only one, and the knowledge of the news items will not prevent them from purchasing the newspaper for its other benefits. The educational value of the news broadcasts must also not be forgotten. To many the radio is the only opportunity to acquaint themselves with our political occurrences and the progress of civilization. These broadcasts are consequently of great benefit to the public. The fact that Congress, refused the passage of a Bill (Senate Bill 1728, 48th Congress, 1st Session) to give newspapers copyright protection for the news they gathered, should be borne in mind by our courts, and thus prevent them from falling into the error of judicial legislation. It is to be hoped that if this case is appealed, the higher court will tend to follow the dissenting opinion of Mr. Justice Brandeis." — (Italics ours.)

We call the court's attention to another very important article, "Piracy of Broadcasting Programs", written by Louis G. Caldwell, former Federal Radio Commission Counsel, and reported in 30 Columbia Law Review, page 1047. In this article, starting on page 1095, Mr. Caldwell discusses such a problem, as we have here at bar.

These articles are pertinent to this petition. At

least, they show the importance of the questions involved in this application, and the substantive reasons why this Court should exercise its discretion and grant the writ in order that the subject matter may be thoroughly reviewed.

Mr. Caldwell in his article discussed both, the International News Service case and the German case, and in regard to the appropriation of published or broadcast news items by a newspaper or radio station, Mr. Caldwell observed at the conclusion of his article:

> *"——Where, however, the appropriation is simply of a news report of factual content, whether by a broadcasting station or by a newspaper, I am inclined to think that our courts will hold the same as the German Reichagericht (although newspapers are to a substantial extent in competition with broadcasting stations) for substantially the same reasons."* (Italics ours.)

Petitioner realizes that these articles are not precedents. They are merely intelligent discussions of the subject matter involved. On certiorari, the application is addressed to the discretion of the Court. These articles prove that the subject matter is unsettled and disputatious; that the contentions are important, and that the merits, if reviewed, are in one way or the other of great interest to the public.

The Circuit Court in this case has attempted to write into the law something that is not in the law

——that is to say, the exclusive use of news for any arbitrary time. Why twenty-four hours as Respondents request? Why eighteen hours as the District Court felt bound to enter on the Mandate of the Circuit Court? Why not only one or, say, two hours?

A king might die; a nation might fall, or the entire world may be embroiled in a world-wide war within the space of two hours. Is this Court going to submit to the proposition that news of that character should become the exclusive property for twenty-four hours of the Associated Press simply because it transmitted it first?

Approaching this point from a different direction, why do news organizations and individuals copyright their literary property under the law, if it is not recognized that news and such property becomes public property after they, themselves, make it public? Can a news organization by first transmitting a record from the court house, become the sole possessor of the right to use that news for twenty-four hours? An affirmation of any such principle would be against public policy.

These questions are important. It would be absurd to attempt to argue the merits of this cause twice, therefore, certiorari should issue in order that they may be intelligently considered. This is

especially true when it is considered that the Circuit Court, even conceding it used the most painstaking efforts, could only find twelve articles used from the local paper during the course of twelve months. Remember, Petitioner cannot be heard in Seattle—ninety miles away. Obviously there was no competition between the Petitioner and the Seattle Times and Seattle Post-Intelligencer.

The public interest will be best served by granting the Petitioner's request. We again call this Court's attention to the fact that the newspapers in the United States have attempted, as early as the year of 1884, to secure legislation, giving them the exclusive right to use news for as short a time as *eight hours*, not twenty-four hours, and failed. This entire question at bar should have been addressed to the legislature —— not the Court.

Senate Bill No. 1728, 48th Congress, 1884, First Session, was introduced, and that Bill provided:

> "That any daily or weekly newspaper, or any association of daily or weekly newspapers, published in the United States or any of the territories, there-of, shall have the sole right to print, issue, and sell, for the term of eight hours, dating from the hour of going to press, the contents of said daily or weekly newspaper, or the collected news of said newspaper association, exceeding one hundred words."

The Senate Committee on the Library reported

that this Bill should not pass. The records hereof may be obtained from the Journal of the Senate, 48th Congress, First Session, at page 548.

Mr. Justice Brandeis in his dissenting opinion in the International News Service case pertinently referred to this abortive piece of special legislation and remarked in substance, that the legislature felt it was unwise to recognize a property right in published news.

Time after time, the newspapers have failed to secure such legislation in the United States, as well as in England. See House of Lords, Sessional Papers, 1898, Vol. III, Bill No. 21.

In the English law, as well as in American Statutes, there are no provisions in the law giving even a limited copyright in news as such, and, no court should do so in fact, because this would open the door to other evils, greater than that sought to be remedied.

News is not property. Facts are public and not private property. News of events of spontaneous origin is, and has always been held to be, public property and complainant has no property right in such news. Davies vs. Bowes (209 Federal 56.)

Equity recognizes a property right in, or in the commercial value of an organization or service de-

vised and used to obtain and confidentially handle and distribute news of events of spontaneous origin, and will use its powers to protect such service, *as long as it remains confidential, and no longer; or to the point of publication, and no further.* Board of Trade vs. Christie Grain Co. (198 U. S. 236.)

We repeat, that no question of copyright under the statute is involved. *The cases concerning profit and performing rights in literary and artistic compositions, along with the ordinary cases on unfair competition will not support the Circuit Court's injunction.* None of these cases afford a complete analogy to the facts at bar. Petitioner should not be subjected to the present injunctive odium without being heard by this Court, especially where so much of the law, the facts, and the issues are in dispute. The damages, of which Respondent complains, have been removed by its own admission in its Brief as heretofore set forth.

During the course of the Argument, the District Court inquired, in substance,

> "**whether there is any authority prohibiting one local newspaper from picking up and publishing verbatim what has been published in another local newspaper?"

Petitioner and respondent made a search of the authorities on this question and no case or authority

could be found that prohibits one local newspaper from "picking up" and publishing verbatim what has been published in another local newspaper. *Respondent admitted it could not find any such authority.*

To be sure, there are many cases involving artistic, scientific, and literary compositions under the copyright laws, where one rival publisher infringed the right of some other publisher and was enjoined, but Petitioner and Respondent were not able to find any case granting a "judicial copyright" so to speak, on news. On the contrary, many cases were found which openly, as well as impliedly, gave the right of one local newspaper to copy verbatim from another.

In fact, the newspaper profession sanctions such "lifting of news" from one paper by another. A textbook, "THE RIGHTS AND PRIVILEGES OF THE PRESS," on page 87, states as follows:

> "Whether an afternoon newspaper may lift from a morning paper has never been decided by the courts, *but the custom of the profession seems to sanction such practice.*" (Italics ours.)

This statement alone, is enough to establish affirmatively that respondent had no rights under the common law in a case like the one at bar. There is no statute that gives respondent any relief. The Common Law did not. *Can a court do so without*

resorting to legislation?

Respondents, the Associated Press, are well aware of this custom and practice of the journalistic profession, as stated in the above text. *The activities of respondent in the case of the Tribune Company of Chicago vs. Associated Press,* (116 *Federal* 126) *proves this.*

In this case (Tribune Company of Chicago vs. Associated Press) (supra), the Chicago Tribune secured the exclusive privilege, by written agreement with the London Times, to use such parts of special war dispatches of the London Times as the Chicago Tribune might select from that paper and have telegraphed to America to the Tribune. The news dispatches taken from the London Times were cabled to America and published in the Chicago Tribune on the same morning and almost simultaneously with the publication of the Times in London. The Associated Press, the alleged miscreant in that case, but the respondents at bar, without any compunction, finesse, apology or hesitation, *pirated,* according to the Chicago Tribune, these news dispatches which were alleged to be the exclusive property of the Chicago Tribune. The evidence showed that the London Times gave the Chicago Tribune the exclusive right to copyright all of these news dispatches in America. A copy of

each published issue of the Chicago Tribune was thereupon deposited with the United States Copyright Office in its entirety.

But notwithstanding the Associated Press' actual knowledge of the Tribune's agreement with the London Times, and notwithstanding the Tribune's rights under its alleged copyright, and notwithstanding the simultaneous publication of this exclusive news in London and Chicago at practically the same time, the Associated Press correspondent in London, simply bought a London Times for a farthing at the exact instant of its London publication, and took such dispatches from the London Times columns as he chose and cabled these dispatches to the Associated Press and its member papers, thereby enabling all newspapers who were members of the Associated Press to publish these exclusive news dispatches at the same time and instant, and sometimes sooner, than the Chicago Tribune.

The Chicago Tribune in that case requested the Federal Court to enjoin the Associated Press from so using its news as above stated. The Court held that it could not protect the Chicago Tribune from this alleged onslaught by the Associated Press, for the reason that *since the copyright law did not apply to newspapers, the Associated Press was with-*

in its rights in so using this news, notwithstanding the Chicago Tribune paid thousands of dollars for this privilege, while the Associated Press received the same privilege for a few shillings by merely purchasing the paper in London.

The court recognized in that case, that news, in the absence of a protective statute, could not be protected once it was published. The court stated:

> " As the exclusive right of publication at common law terminates with the publication in London, no protection then exists beyond that expressly given by the Statute. " (Meaning the Copyright Law) —— (Notation ours.)

Thus, it is seen that the respondent has enjoyed the privilege of "lifting news," so to speak, from other newspapers for years, *once it has been published.* They and their members have and are now enjoying the privileges extended them by the Government through the second-class postal rates. Now, however, they begin to speak in sonorous tones about property rights when radio attempts to do the same thing that the government has been indirectly paying newspapers to do, with an important exception, *radio receives no governmental subsidy for performing this public service.*

If a wide dissemination of news is not conducive to a better informed electorate and within the public interest, would the government stand the ex-

pense and attempt to further it by such a subsidy as aforesaid?

To be sure, newspapers are entitled to protection up to the time of publication, *but no longer;* they are entitled to protection as long as news events remain *confidential* and *within their own circle,* as against competitive news gathering agencies and others, *but never past the point of publication, and in no case, after distribution and sale.* Custom, the authorities, and respondents own practice recognize this plain rule.

The respondents cause of action in this case depends upon whether respondent can show a common law right in its its news *after publication and distribution.* News, in order to be protected as such, must be copyrighted and the news in question was not so protected. A newspaper cannot be copyrighted in its entirety under the U. S. Copyright Laws; and further, the authorities recognize that no right remains in news after its publication and distribution. The Common Law terminates its protection on publication, and unless there is a Statute reserving to newspapers this right, news becomes common property once it has been published and *distributed.*

This Court in the International News Service case (Supra) rejects respondent's theory in the case at

bar that a newspaper or a radio cannot copy from one another after publication and *distribution*. Mr. Justice Pitney specifically stated on page 235, in discussing news as property — —

> "::except for matters improperly disclosed, or published in breach of trust or confidence, or in violation of law, *the news of current events may be regarded as common property.*" (Italics ours.)

In the case of Dodge Corp. vs. Comstock (251 N. Y. S. 172) the Court quoted the following statement with approval:

> "The distributor's knowledge of news is his property as long as he keeps it to himself or communicates it only to others on condition that they do so. He will be protected against any one who *surreptitiously obtains this information from one of its members. subscribers or employees,* or by any form of pilfering or unfair means." (citing a great many cases.)
>
> "In every one of these cases the court found that the defendant got the news or the quotations *surreptitiously,* and enjoined him for that reason. They abundantly support an injunction on the first grounds mentioned in the opinion of the court."
>
> *"But if the distributor publishes, to use a word in this connection which I think has been unreasonably criticised or abandons, or dedicates, or communicates his information to the world, his rights of property in his information and his right to be protected against the use of it is gone."* (Italics ours.)

As we have constantly reiterated, the test is "*was the news received fairly?*" In the case of Atlantic Monthly Publishing Co. vs. Post Pub. Co. (27 Fed. (2nd) 556), the defendant had republished a matter which had appeared in the plaintiff's publication, upon which a copyright had been applied for, *but not granted at the time of the re-publication by the Defendant.* The Court stated that the plaintiff had no right of action unless the matter had been copyrighted, and remarked on page 559 as follows:

> "At the time when the bill was filed, the defendant had, therefore, no existing copyright. This being so it had no right to an injunction. The only equitable relief sought by the bill is the injunction. As the right to it did not exist when the bill was filed, the suit must be dismissed. It is like a suit on a patent, which had expired before the bill was brought."

The only cases which prevent one publication from publishing news items out of another publication involve the republication of items in trade papers, such as Building and Engineering plans and specifications. In those cases the courts have rightfully enjoined one Trade paper from copying the plans and specifications appearing in another Trade paper, because such plans are confidential matter, and trade secrets, and is not news or mere current events, or items or factual content, as appear in newspapers, or as broadcast over the radio.

The Federal Courts invariably hold that a newspaper is not capable of being copyrighted. All of the authorities hold that the Common Law right in news ends at the point of publication, and the courts have no judicial authority or right to place a judicial copyright on this news. If they did, then there would be no excuse for the existence of the Copyright Statute. The Federal Constitution has delegated that sole right to Congress.

Under Article I, Section 8, paragraph 8, of the United States Constitution, it is stated that Congress only, is empowered:

> "**to promote the progress of science and useful arts, by securing for a limited time to authors and inventors the exclusive right to their respective writings and discoveries."

CONCLUSION

The decision of the Circuit Court was wrong. It should be reviewed and reversed. The writ should issue, if for no other reason, than to clarify and restate the law on the subject matter involved. *If the respondent's interests are of so important a character and the public interest would be best served were the law such as the Circuit Court erroneously held it*

to be, then there is presented a proper subject for the Congress — — not the Courts.

Respectfully submitted,

CLARENCE C. DILL,
Washington, D. C.

KENNETH C. DAVIS,
Seattle, Washington.

WILLIAM H. PEMBERTON,
Olympia, Washington.

Attorneys for Petitioner.

APPENDIX "A"

In the District Cout of the United States for the Western District of Washington, Northern Division

In Equity—No. 1087

THE ASSOCIATED PRESS, a corporation,

Complaint,

vs.

KVOS, INC., a corporation,

Defendant.

PRELIMINARY INJUNCTION

THIS CAUSE coming regularly on for hearing, the Honorable John C. Bowen, Judge of said Court presiding, in the Court Room of the above entitled Court; in the City of Seattle, King County, State of Washington, upon the records and files herein, in-

cluding writ of mandate from the United States Circuit Court of Appeals for the Ninth Circuit, and upon application of the complainant herein, complainant appearing by J. W. Kindall of its solicitors and defendant appearing by Kenneth C. Davis of its solicitors, and the matter having been heretofore submitted to the Court and the Court being well and fully advised in the premises,

IT IS HEREBY ORDERED that from and after the time when the said persons shall severally have knowledge of this preliminary injunction, and until the further order of the Court, defendant and its officers, agents, servants, employees, successors and assigns, and all others acting for or by permission of defendant be and they hereby are restrained from appropriating and broadcasting any of the news gathered by the Associated Press for the period following its publication in Complainant's newspapers during which the broadcasting of the pirated news to KVOS' most remote auditors may damage the Complainant's papers' business of procuring or maintaining their subscriptions and advertising or during such period as said news may retain or has commercial value, either bodily or by excerpts, by rearrangement, or after rewriting, it being found for the purpose of this preliminary injunction that such period is eighteen (18) hours after the first

publication of said news in any newspaper which is a member of complainant corporation.

DATED this 27th day of February, 1936.

By the Court:

JOHN C. BOWEN,
Judge.

ATTEST:

EDGAR M. LAKIN,
Clerk

By S. E. LITCH,
Deputy.

Presented by J. W. Kindall.

O. K. as to form:

.....
Solicitors for complainant

.....
Solicitors for Defendant

Received copy —

KENNETH C. DAVIS

APPENDIX "B"

In the District Court of the United States for the Western District of Washington, Northern Division

IN EQUITY—No. 1087

THE ASSOCIATED PRESS, a corporation,

Complainant,

vs.

KVOS, INC., a corporation,

Defendant.

PRELIMINARY INJUNCTION

PROPOSED BY DEFENDANT

THIS CAUSE coming regularly on for hearing, the Honorable John C. Bowen, Judge of said Court presiding, in the courtroom of the above entitled Court, in the City of Seattle, King County, State of Washington, upon the records and files herein, including writ of mandate from the United States Circuit Court of Appeals for the Ninth Circuit, and upon application of the complainant herein, complainant appearing by its solicitors, Howard and Kindall and John W. Davis, and defendant appearing by its solicitors, Kenneth C. Davis, Clarence C. Dill, and William H. Pemberton, and the matter having been heretofore submitted to the Court and the Court being well and fully advised in the premises,

IT IS HEREBY ORDERED that from and after the time when the said persons shall severally have knowledge of this preliminary injunction, and until

the further order of the Court, that defendant and its officers, agents, servants, employees, successors and assigns, and all others acting for or by permission of defendant be and they hereby are restrained from appropriating and broadcasting any of the news gathered by the Associated Press for the period following its publication in Complainant's newspapers during which the broadcasting of the pirated news to KVOS' most remote auditors may damage the Complainant's papers' business of procuring or maintaining their subscriptions and advertising, or during such period as said news may retain or has commercial value.

Dated this ..... day of ....., A. D. 1936.

By the Court:

.....

Judge

ATTEST:

.....

Clerk

.....

Deputy

Copy received —
J. W. Kindall,
Of Solicitors for Complainant

The foregoing form of order refused and to such refusal exception is allowed defendant this 27th day of February, 1936.

John C. Bowen,
U. S. Dist. Judge.

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CHARLES ELMORE C
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Supreme Court of the United States,

OCTOBER TERM 1935.

No. 804 28

KVOS, INC., a corporation,
Petitioner,

vs.

THE ASSOCIATED PRESS, a corporation,
Respondent.

BRIEF OF RESPONDENT OPPOSING ISSUANCE OF WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH COURT.

JOHN W. DAVIS,
WILLIAM C. CANNON,
HAROLD W. BISSELL,
15 Broad Street,
New York.

CLINTON W. HOWARD,
206 First National Bank Bldg.,
Bellingham, Washington.
Counsel for The Associated Press,
a corporation, Respondent.

THE BALLOU PRESS NEW YORK

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Supreme Court of the United States.

OCTOBER TERM 1935.

KVOS, INC., a corporation,
Petitioner,

against

THE ASSOCIATED PRESS, a corporation,
Respondent.

RESPONDENT'S BRIEF.

Respondent submits this brief opposing issuance of a writ of certiorari herein to the Circuit Court of Appeals of the Ninth Circuit, to review its decree reversing the decree of the United States District Court, for the Western District of Washington, Northern Division.

The petition involves two motions: (1) a motion by defendant-petitioner to dismiss the bill of complaint, which resulted in a decree of dismissal, with prejudice, by the District Court, and, upon appeal, a reversal by the Circuit Court of Appeals; and (2) a motion by complainant-respondent for a preliminary injunction, which resulted in an order of the District Court denying the motion, and, upon appeal, an order of the Circuit Court directing the District Court to grant the preliminary injunction, and an order of the District Court pursuant thereto.

In its petition and supporting brief, the petitioner repeatedly overlooks the elementary fact that its motion to dismiss is directed solely to the allegations of the complaint and is not affected by the affidavits and findings, which are to be considered only upon the motion for the preliminary injunction. We gather that the petitioner intended, in a general way, to confine its petition to the questions arising out of

the motion to dismiss; however, since the argument seems to escape these seemingly intended bounds at many points, we shall include a brief statement with respect to the motion for a preliminary injunction.

Statement of the Case.

The bill of complaint alleges that the complainant, The Associated Press, is a New York membership corporation with more than 1200 members, each owning or representing a daily newspaper in the United States; that the complainant is engaged, for the benefit of its members, in gathering news from all over the world by its own instrumentalities, by exchange with its members, and by interchange with or purchase from other news agencies; that the cost of gathering news and distributing the same to its members, amounting to many millions of dollars a year, is assessed upon its members; and that the general news gathered by complainant as well as the local news gathered by its members, is by mutual agreements, set forth in the by-laws, restricted to the members for the purposes of regular publication by them (Tr. pp. 2 to 6).

The bill further alleges that the defendant KVOS, Inc., is a corporation of the State of Washington, engaged at Bellingham, Washington, in the business of radio broadcasting for profit, the profit being derived by sale of time for advertising purposes; that during three half hour periods daily, the defendant broadcasts a so-called "Newspaper of the Air", in the course of which, interspersed with paid advertising, it systematically reads, verbatim or in slightly rearranged form, the most important and interesting items of news obtained from the latest editions of three newspapers which are published by members of the complainant Associated Press, namely, The Bellingham Herald, the Seattle Post-Intelligencer, and The Seattle Daily Times; and that the news so "pirated" by the defendant is news gathered by the complainant and by its members within the terms of the membership agreements above mentioned.

The bill of complaint further alleges that the defendant and several members of the complainant serve much the same territory in the dissemination of such news the territory served by defendant extending "for a radius of seventy-five to one hundred miles from the said City of Bellingham"; that the defendant and the members of the complainant disseminate news in order to increase the value of their respective mediums for advertising purposes, the defendant making its profit out of the sale of time to advertisers and the members of complainant making their profit largely out of the sale of space to advertisers; that the defendant, by pirating news so gathered by complainant and its members and broadcasting the same, makes the news known to the general public several hours in advance of the time when newspapers published by members of complainant can reach their actual or potential subscribers; that this practice of defendant is an appropriation of the product of the industry of complainant and its members and constitutes unfair competition; that it works a direct and irreparable injury to complainant and its members; and that the complainant has frequently requested the defendant to desist from the said practice, but that defendant has refused to desist and intends to continue the practice. The bill of complaint thereupon asks relief by temporary and permanent injunction (Tr. pp. 16-17).

The bill of complaint not only alleges the jurisdictional diversity of citizenship as above noted, but also alleges that the amount involved exceeds $3,000 (Tr. p. 3).

The complainant moved, by show cause order containing a temporary restraining order, for a temporary injunction (Tr. pp. 37 to 40); and the portion of the Record particularly relating thereto embraces Tr. pp. 18-41, 45-465. The defendant moved to dismiss the bill of complaint on the ground that it does not recite facts sufficient to entitle complainant to the relief prayed for and on other detailed grounds (Tr. pp. 42 to 44). The defendant's motion to dismiss was granted (with prejudice) and, as a necessary consequence,

the complainant's motion for a preliminary injunction was denied by a decree and order of the District Court (Tr. pp. 516 to 518). The Circuit Court of Appeals reversed the District Court, reinstating the bill of complaint and directing the issuance of a preliminary injunction. The case is reported under the title *The Associated Press* v. *KVOS, Inc.* in 9 F. Supp. 279 (Bowen, D. J.) and 80 F. (2d) 575 (Wilbur, Denman and Mathews, C. JJ.; Denman, J., writing).

In seeking a review of this determination of the Circuit Court of Appeals, the defendant-petitioner contends (I) that the requisite jurisdictional amount is not shown to be involved; (II) that the requisite diversity of citizenship is not shown, since the complainant, The Associated Press, is not the real party in interest, and the joinder of the real parties in interest would have destroyed diversity of citizenship; (III) that the complaint does not state facts sufficient to constitute a cause of action; and (IV) that the complainant failed to make out a case for a preliminary injunction. In opposing the petition, we shall take up these contentions in order.

It may be remarked at the outset that we think all of the important principles involved in the present case were settled in *International News Service* v. *Associated Press*, 248 U. S. 215, that the Circuit Court of Appeals correctly followed and applied the decision in that case, and that there is therefore no occasion for the issuance of a writ of certiorari.

POINT I.

The Bill of Complaint adequately alleges that the requisite jurisdictional amount is involved.

The complaint alleges that more than $3,000. is involved in the controversy (Tr. p. 3). This allegation is controlling for the purpose of the motion to dismiss the bill.

> Opinion of District Court herein, 9 F. Supp. 279, 284;
>
> Montgomery, Federal Jurisdiction & Procedure, 3 Ed. § § 207, 210.

Petitioner suggests that the lack of the requisite jurisdictional amount is shown by the trifling amount of pirating disclosed in the affidavits submitted on the motion for a preliminary injunction. Insofar as this suggestion bears on that motion, we shall deal with it under Point IV. It is sufficient under the present point to note that the affidavits cannot be considered upon the motion to dismiss the bill.

Petitioner further suggests that the lack of the requisite jurisdictional amount appears upon the face of the bill since the complainant's business is shown to be of a non-profit nature. It is true that The Associated Press makes no profit. It is a membership corporation which meets its expenses, by assessments upon its members. But the fact that a corporation does not make a profit does not mean that it cannot be damaged. Furthermore, as stated under the succeeding point, The Associated Press is a proper party to sue on behalf of its members; and it is apparent that the interest of the members, properly to be protected in this action, may exceed $3,000 as alleged in the complaint. The real interest of the respondent and its members as outlined in the complaint is unquestionably in excess of $3,000 under the principle that the jurdisdictional amount is to be tested, in such

a case as the present, by the value of the right sought to be protected and not by the immediate pecuniary amount involved.

Opinion of C. C. A. herein, 80 F. (2) 575, 579;
Montgomery, Federal Jurisdiction & Procedure, § 208 (and cases cited);
Bitterman v. *Louisville & N. R. R.*, 207 U. S. 205, 225;
Local No. 7 of Bricklayers Union v. *Bowen*, 278 F. 271;
Herbert v. *Rainey*, 54 F. 248;
King v. *Kansas City Police Relief Association*, 60 F. (2d) 547.

It is further to be noted that the non-profit nature of the respondent's business was set forth in *International News Service* v. *Associated Press*, 248 U. S. 215, in substantially the same terms as in the present case; and this Court nevertheless assumed without question that the requisite jurisdictional amount was there involved.

POINT II.

The Bill of Complaint adequately discloses the respondent, The Associated Press, as the proper party to bring this action.

The petitioner argues that The Associated Press is not the real party in interest and that a joinder of the real parties in interest would destroy the requisite diversity of citizenship.

The petitioner bases this argument primarily on the theory that The Associated Press cannot have an interest in the controversy since it operates without profit, merely assessing the cost of its operations upon its members. In view of the structure of The Associated Press and its relationship to its members, we think a court of equity will recognize that it is

fundamentally a business enterprise. Under its by-laws all news furnished to members or gathered by members belongs to The Associated Press. It is designed to maintain a trained and efficient organization for the gathering of news and, to this end, to derive the necessary income to employ and adequately remunerate a staff of experts. For all practical purposes it is in obvious and keen competition with other news gathering agencies as was recognized by the Supreme Court in the *International News Service* case (248 U. S. 215), in which case the record showed The Associated Press's method of operation precisely as alleged in the present bill of complaint. Its members are its customers, and there would be no point in collecting profits from them in order to return the profits as dividends.

Quite aside from the respondent's interest as a business concern, the respondent is a proper party to sue on behalf of the various newspaper members. When the question is one of common or general interest to many persons constituting a class, one or more may sue for the whole (Fed. Eq. Rule No. 38, Hopkins 6 ed., p. 226). It is well settled that classes of persons similarly situated may be represented by an association or organization such as the respondent herein (*Merchants Association* v. *United States*, 231 Fed. 292; Foster's Fed. Pr., 6 ed., sec. 114). In the *International News Service* case the court expressly held that the "complainant is a proper party to conduct the suit as representing their (the members') interest * * *" (248 U. S. 215, 233).

The petitioner argues, however, that the present case involves no general interest on the part of similarly situated parties, but concerns only one or at the most three newspapers (Petition, pp. 8, 17); and that these papers are necessary parties if not the only proper parties complainant. While they might have been proper parties they are not necessary parties since the case does not deal with any right or damage which is limited to the three newspapers. The complaint alleges that numerous other members of respondent within the territory in question are injured (Tr., p. 13).

Furthermore, in showing the general operation and structure of The Associated Press, the complaint clearly shows that its more than 1200 members (Tr. p. 4) are interested in the protection of The Associated Press as their mutual agency for the competitive collection and distribution of news.

Both the District Court and the Circuit Court of Appeals held that there was no defect of parties complainant in this case.

> Opinion of District Court, 9 F. Supp. 279, 284;
> Opinion of C. C. A., 80 Fed. (2d) 575, 579-580.

As pointed out in the latter opinion, the question here under consideration has been decided adversely to the petitioner in the *International News Service* case (248 U. S. 215).

POINT III.

The Bill of Complaint states facts sufficient to constitute a cause of action for a permanent injunction; and the Circuit Court of Appeals properly reversed the decree of the District Court dismissing the bill.

No distinction of importance can be drawn between the present case and *International News Service* v. *The Associated Press,* 248 U. S. 215. The petitioner attempts to meet the *International News Service* case partly by dwelling on various differences, of no importance in principle, between newspapers and broadcasts, partly by stubborn adherence to the dissenting views rejected in the prevailing opinion of this Court, and partly by an unfounded and repetitious misstatement of the holding of the majority of this Court. Furthermore, while we cannot find that petitioner has anywhere stated what this Court did hold, we gather that it does not agree with the holding.

In the present case, the allegation is that defendant-petitioner pirates The Associated Press news by taking the same from newspapers, published by members of The Associated Press, after publication but before distribution in ordinary course, and by disseminating the same by radio broadcasts. The petitioner repeatedly asserts that, accordingly, it obtained the news rightfully; and that this fact distinguishes the present case from *International News Service* case in which, petitioner repeatedly asserts, the news was obtained wrongfully, namely, by bribery and like methods. The simplest way to dispose of this reckless misstatement is to quote from the opinion of this Court (248 U. S. 215, 231):

> "The bill was filed to restrain the pirating of complainant's news by defendant in three ways: First, by bribing employees of newspapers published by complainant's members to furnish Associated Press news to defendant before publication, for transmission by telegraph and telephone to defendant's clients for publication by them; Second, by inducing Associated Press members to violate its by-laws and permit defendant to obtain news before publication: and Third, by copying news from bulletin boards and from early editions of complainant's newspapers and selling this, either bodily or after rewriting it, to defendant's customers."

After pointing out that the matters arising under the first and second heads (bribery and inducing violations of by-laws) had been disposed of in the courts below (by the granting of a preliminary injunction) this Court said (p. 232):

> "The only matter that has been argued before us is whether defendant may lawfully be restrained from appropriating news taken from bulletins issued by complainant or any of its members, or from newspapers published by them, for the purpose of selling it to defendant's clients. * * * As presented in argument, these questions are: 1. Whether there is any property in news; 2. Whether, if there be property in news collected for the purpose of being published, it survives the instant of its publication in the first newspaper to which it is

communicated by the news-gatherer; and 3. Whether defendant's admitted course of conduct in appropriating for commercial use matter taken from bulletins or early editions of Associated Press publications constitutes unfair competition in trade."

It was upon these questions that this Court affirmed the order of the Circuit Court of Appeals granting a preliminary injunction under the third head (the taking of news from bulletins and published papers). Thus, there was no distinction whatever, in the manner of obtaining news, between the *International News Service* case (so far as this Court was called upon to decide) and the present case. In each case the news was obtained rightfully. In each case the point is that the defendant *wrongfully used* the news although *rightfully obtained.*

A. The Complaint States a Cause of Action Based on Defendant's Unfair Competition in the Advertising and News Fields.

For the purposes of a motion to dismiss, the allegations of the bill must of course be taken as true. The petitioner, without any regard to whether its argument is addressed to the motion to dismiss or to the motion for a preliminary injunction, volunteers the statement that the petitioner's station is a small 100-Watt station with a sending radius of only five miles (Petition, p. 1, and elsewhere); that on this account it could not compete with any of the member newspapers of The Associated Press, except the Bellingham Herald, and that even the Circuit Court of Appeals found that the news items taken from this paper were "but twelve in number over the course of a year" (Petition, p. 17).

As will later appear, these volunteered statements have no foundation in the record, even as applied to the motion for a preliminary injunction. Much less can they be considered upon the motion to dismiss. The allegation of the complaint is that the territory served by the petitioner's sta-

tion extends for a radius of 75 to 100 miles from the City of Bellingham, and that numerous member newspapers of The Associated Press, including the three specifically mentioned in the complaint, serve the same territory to a greater or lesser extent (Tr. p. 13).

Regarding The Associated Press and its member newspapers as identical so far as the right to injunctive relief is concerned, the allegations of the complaint show that it and the defendant are engaged in competition in the advertising field. The complainant's members and the defendant each sell advertising facilities to advertisers, the complainant's members selling space in their advertising mediums, while the defendant sells time on its advertising medium. In the case of each business, the advertising medium obtains a substantial part of its advertisement-carrying power from news. In the conduct of its advertising business, the defendant appropriates or pirates and broadcasts news gathered by the complainant and its members, and thereby impairs the carrying power of the advertising mediums of the complainant's members.

The District Court held (Tr. pp. 484 to 485) that no competition exists between newspaper publishers and broadcasting sfations, because the newspaper publisher sells his paper to the public at a nominal price while the broadcaster charges the public nothing. We think this position overlooked the plain facts of the case, and proceeded upon an unduly narrow interpretation of the word "competition". In reversing the District Court, the Circuit Court of Appeals effectively disposed of the position thus taken by the lower Court (80 F. (2d) 575, 581-582).

It is a well recognized fact, alleged in the bill (Tr. p. 9), that newspapers derive the larger part of their revenue from advertising rather than from the sale of their papers to the public. A large circulation is essential in order to attract advertisers; and, in order to obtain a large circulation, attractive and complete news reports are vital.

In the same way, in the radio field, the broadcaster receives his revenue from the sale of advertising time or sponsored programs; and in order to attract advertisers it is essential to have a large listening audience. It is a matter of public knowledge that the broadcaster, in addition to the sponsored programs for which he is paid, often broadcasts, without allocated charge, some feature (whether news or otherwise) which he thinks will appeal to the public.

Thus the newspaper publisher and the broadcaster are in direct commercial competition with each other in their endeavor to attract and retain paid advertising by widening the circle of those whom they reach.

It is merely viewing the situation from another angle to say that The Associated Press members and the petitioner are likewise competing in the business of disseminating news. In each case the dissemination of news is an integral part of the business of the respective parties, whether the newspaper or the broadcasting business. The newspaper disseminates news as part of a commercial enterprise; and obtains a return by charging its advertisers. In the conduct of its news disseminating business the defendant appropriates or pirates and broadcasts news gathered by the complainant and its members and thereby competes unfairly and directly with the complainant members.

In *Associated Press* v. *Sioux Falls Broadcast Association* (U. S. D. C. for Dist of S. D. March 14, 1933, Elliott, District Judge) the facts were on all fours with those of the present case and the Court there granted such relief as is sought herein.*

In *International News Service* v. *Associated Press* (248 U. S. 215), The Associated Press was granted an injunction

* No opinion was rendered in the *Sioux Falls* case nor is the case reported, but copies of the findings and conclusions were submitted to both lower courts herein on argument. A similar case, likewise unreported, is *New Orleans Times Picayune, et al.* v. *Uhalt* (N. Y. Times, June 30, 1933) in which plaintiffs were granted a twenty-four hour injunction against use of news from their newspapers for defendant's broadcasting purposes.

similar to that sought in the present case. As heretofore stated we think that case is not distinguishable in principle from the present case. There as here the complainant was The Associated Press. Its status as a membership corporation and its relation to its members were set forth as in the present case. The defendant International News Service was likewise engaged in the gathering of news and the distribution thereof to newspapers; but the International News Service was not a membership corporation, and operated for a profit on its own account by charging its subscribers for its service and not by assessing members as did The Associated Press. The case involved the piracy of news by the taking of news items from papers of Associated Press members upon first publication and by the commercial distribution of such items.

On the question of unfair competition, this Court there said (248 U. S. 215, 240-241):

> "The contention that the news is abandoned to the public for all purposes when published in the first newspaper is untenable. Abandonment is a question of intent, and the entire organization of the Associated Press negatives such a purpose. The cost of the service would be prohibitive if the reward were to be so limited. * * * Their effect (complainant's by-laws) is that publication by each member must be deemed not by any means an abandonment of the news to the world for any and all purposes, but a publication for limited purposes; for the benefit of the readers of the bulletin or the newspaper as such; not for the purpose of making merchandise of it as news, with the result of depriving complainant's other members of their reasonable opportunity to obtain just returns for their expenditures."

Referring to the news, this Court said (p. 240):

> "* * * It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience."

We think it is apparent that the advertising and news disseminating phases of the respective businesses (newspaper and broadcasting) cannot be divorced, that the defendant broadcasts news for profit, even though it obtains its return indirectly from advertisers, and that accordingly the complainant's members and defendant are competing commercially in the dissemination of news. As a statement of fact, we think the foregoing is too obvious for argument. Insofar as legal questions are involved, the following cases support the proposition that petitioner was operating for a profit in its news broadcasts even though it collected from others than the listeners.

Herbert v. *Shanley Co.* (1917), 242 U. S. 591;
Buck v. *Jewell-LaSalle Realty Co.*, 283 U. S. 191;
Remick v. *American Automobile Accessories Co.*, 5 F. (2d) 411 (Cert. denied 269 U. S. 556);
Remick v. *Bamberger & Co.*, 291 F. 776;
Sarpy v. *Holland* (1908), 2 Ch. 198.

In the *Shanley* case, this Court held that the defendant, in employing an orchestra to render a musical composition in its restaurant without any specific charge to the customers, was performing the composition "for profit" within the meaning of the copyright statute. This Court said (pp. 594, 595):

> "The defendants' performances are not eleemosynary. They are part of a total for which the public pays, and the fact that the price of the whole is attributed to a particular item which those present are expected to order, is not important * * * If music did not pay it would be given up. If it pays it pays out of the public pocket. Whether it pays or not the purpose of employing it is profit and that is enough."

Needless to say, the petitioner misconceives the applicability of this case in distinguishing it as a copyright case (Brief, pp. 30-31). It is cited merely as showing by analogy that

petitioner's news broadcasts are an integral part of their commercial enterprise and, in the sense here pertinent, cannot be regarded as gratuitous. Upon the principle of the *Shanley* and other like cases above cited, we think it is clear that the petitioner is in competition with The Associated Press and its members, even though the petitioner finds itself unable to make any charge directly against its listeners. The Circuit Court of Appeals so held, and we think there is no occasion for a review of its decision.

The petitioner assumes (incorrectly, as pointed out under subhead C, *infra*) that the complaint cannot be upheld unless it makes out a case of actual competition. On this assumption, the petitioner argues that the competition must be substantial in the sense and degree pertinent in cases arising under the Federal Trade Commission and the Clayton Acts.

We have already referred to the fact that the petitioner asserts, utterly without foundation, that its station is effective only within a radius of five miles; and to the fact that the complaint states the radius as from seventy-five to one hundred miles.

The petitioner expands its general effort to minimize the competition by arguing (Petition, pp. 13, 14, 16) that it consumes only ten percent of its time in news broadcasts; and thereupon attempts to draw an analogy from Federal Trade Commission and Clayton Act cases. Petitioner overlooks the distinction between the general law of unfair competition as between individuals and the statutory law in the public interest under which the Commission acts—a distinction which the courts have repeatedly emphasized.

> 15 U. S. C. A. sec. 45, and notes particularly p. 262.
> *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495;
> *Raladam Co.* v. *Federal Trade Commission,* 283 U. S. 643 (affirming 42 F. (2d) 430).

In *International Shoe Company* v. *Federal Trade Commission* (280 U. S. 291) (Petition pp. 9, 16) the question

arose under the Clayton Act as to whether the Shoe Company's acquisition of the stock of another Company was such as "to substantially lessen competition" within the prohibition of that act. The percentage of competition relevant under the Act has nothing to do with the question of private rights involved in the present case.

In a case of unfair competition, the extent of defendant's business has no bearing. Thus complainants' right to enjoin infringement of their trade-names is unaffected by the amount of business done by defendant. (*Garcia* v. *Garcia*, D. C. Wisconsin, 197 F. 637 at 641).

B. The Complaint States a Cause of Action Based on Defendant's Infringement of a Property Right in News.

The petitioner repeatedly states in substance that this Court, in the *International News Service* case, *supra*, held that neither The Associated Press nor any of its members had any property right in news reports after the instant of their first publication. The assertion would seem to be specifically controverted by the language of this Court. As between the parties engaged in the commercial use of fresh news, this Court stated that news as news "must be regarded as quasi property, irrespective of the rights of either as against the public" (pp. 236-273). Again this Court refers to news as "salable material" and, as such, susceptible of mis-appropriation (p. 239). Again, referring to news, this Court says (p. 240):

> "It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience."

In view of this language, it is scarcely necessary to deal with petitioner's volatile argument that "in order to sustain the Circuit Court's decision this Court is called upon to affirm a general and absolute property right in published and distributed news, as such". (Brief, p. 21).

It is perhaps desirable, at this point to comment briefly on several other cases cited by petitioner as holding that news, as such, is not subject to protection.

While "news", as such, is not subject to copyright, its "piracy" from the gatherer will be enjoined until its dissemination by that gatherer. *Davies* v. *Bowes* (209 F. 53) cited by petitioner (Brief p. 53) involved only a question of whether a piece of fiction, printed in a newspaper as news and copyrighted, was entitled to copyright protection against the use of a story in a drama, long after the publication. The Court held there was no copyright since the fiction was printed and offered to the public as news.

Tribune Company v. *A. P.* (116 F. 126) cited by petitioner (Brief pp. 56, 57, 58) is purely a copyright case and was so decided (and the case was urged before the Supreme Court in the *International News Service* case, 248 U. S. at pp. 217, 219). The first publication would of course terminate the common law copyright, but the Supreme Court in the *News Service* case emphatically states that the question before it was not a copyright question but a question of the right to protection during the very process of dissemination, which necessarily continued for some hours after the first technical publication. In the *Tribune* case no question of unfair competition or unjustified interference with another business was presented. Incidentally, the petitioner is mistaken in saying the defendant therein was the present complainant. The present complainant had not been organized at that time.

Atlantic Monthly Publishing Co. v. *Post Publishing Co.* (27 F. (2d) 556) cited by petitioner (Brief p. 61) held that the plaintiff was not entitled to an injunction since its right in an article by Alfred E. Smith had already terminated, *by the terms of the agreement with the plaintiff.*

Dodge Corporation v. *Comstock,* 251 N. Y. S. 172, cited by petitioner (Brief p. 60) is a case of the misappropriation of confidential news. The quotation by petitioner is a dictum and is from the dissenting opinion in the *International News Service* case when in the Circuit Court of Appeals. (245 F. 244, 253).

Assuming that there is a quasi property in fresh news during the period of its normal dissemination, as held by this Court in the *International News Service* case, it is apparent that the petitioner in the present case, under the allegations of the complaint, is guilty of a misappropriation of such property.

C. THE COMPLAINT STATES A CAUSE OF ACTION BASED ON DEFENDANT'S INTERFERENCE WITH A LAWFUL BUSINESS WITHOUT JUSTIFICATION.

We think the two preceding subheads establish complainant's right to injunctive relief, first, because the defendant is unfairly competing in the advertising and news fields, and, second, because defendant is infringing on what equity regards as a property right in news as between the parties. In view of the considerable discussion and argument which has arisen in the case with respect to the precise definition of competition and the precise boundaries of the property right in news after first publication, we think it is pertinent, although perhaps superfluous, to point out that the complainant's right to injunctive relief rests on a broader ground than unfair competition or a specific property right in news reports.

The basic right of complainant and its members is the right to carry on a lawful business without interference; and this right has consistently been held to be a property right such as to afford a basis for equity jurisdiction. The interference is not actionable if it is merely a consequence of defendant's proper exercise of his own rights; in other words, the interference must be without justification. But the defendant is bound to act in accordance with the maxim *sic utere tuo ut alienum non laedas.* The most frequent justification for interference with another's business is competition—and competition is of course a *prima facie* justification since favored by public policy. But competition is not a justification if it is unfair. This is the origin and the sustaining principle of the law of unfair competition.

Accordingly, the plaintiff's right to relief depends, first, on interference with his business, and, second, on lack of justification therefor on the part of the defendant. As far as the fact of interference with and damage to complainant's business is concerned, the present case is indistinguishable from the *International News Service* case, *supra*.

It follows that the matter of competition is relevant only in so far as it affects the defendant's justification for pirating complainant's news reports. Competition constitutes a *prima facie* justification, and renders it necessary for the complainant to show that the competition is unfair. As heretofore indicated, we think the defendant clearly has the *prima facie* justification of competition, but that this justification is defeated with equal clearness, by the unfairness of the competition. Even if it could be maintained that defendant was not competing with the complainant since it charged nothing to its listeners, this would have no effect except to deprive the defendant even of its *prima facie* justification, and would therefore put the defendant under the necessity of showing some other justification. Such a justification is in fact suggested in the claim that defendant is performing a public service; but before dealing with this alleged justification, we shall briefly refer to the authorities showing that the law of unfair competition is simply a phase of the broader law of unfair or unjustifiable interference with a lawful business. Referring to the business of making news known to the world, this Court said in the *International News Service* case, *supra*:

> "The parties are competitors in this field; and, on fundamental principles, applicable here as elsewhere, when the rights or privileges of the one are liable to conflict with those of the other, each party is under a duty so to conduct its own business as not unnecessarily or unfairly to injure that of the other. *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, 254" (pp. 235-236).

> "* * * The right to acquire property by honest labor or the conduct of a lawful business is as much entitled to protection as the right to guard property already ac-

quired * * * It is this right that furnishes the basis of the jurisdiction in the ordinary case of unfair competition" (pp. 236-237).

"Stripped of all disguises, the process (of defendant in pirating news) amounts to an unauthorized interference with the normal operation of complainant's legitimate business precisely at the point where the profit is to be reaped, in order to divert a material portion of the profit from those who have earned it to those who have not * * *" (p. 240).

This Court further emphasized the breadth of the ground on which its decision rested by its citation of the *Hitchman* case, *supra,* in which the defendant labor union appropriated no profits of the plaintiff but was enjoined from inducing the plaintiff's employees to join the union contrary to their agreement with the plaintiff. Again, in commenting on the principle that "palming off" is not essential to give a right of action, this Court said (pp. 241-242):

"But we cannot concede that the right to equitable relief is confined to that class of cases. In the present case the fraud upon complainant's right is more direct and obvious * * * Instead of selling its own goods as those of complainant, it substitutes misappropriation in the place of misrepresentation and sells complainant's goods as its own.

"Besides the misappropriation, there are elements of imitation, of false pretense, in defendant's practices * * * but these elements, although accentuating the wrong, are not the essence of it".

There are a great variety of cases holding that an unjustified or unfair interference with or injury to a lawful business is actionable, despite the absence of such conventional features as "passing off" and competition. Thus, the appropriation of a business system or the like is actionable, although there is no "passing off":

Fonotipia, Ltd., v. *Bradley,* 171 F. 951;
Meyer v. *Hurwitz,* 5 F. (2d) 370 (App. dis. 10 F. (2d) 1019);

Prest-O-Lite Co. v. *Davis*, 209 F. 917, Aff'd. 215 F. 349;

National Telephone Directory Company v. *Dawson Manufacturing Co.*, 214 Mo. App. 683 (263 S. W. 483).

In *Cheney Bros.* v. *Doris Silk Corporation*, 35 F. (2d) 279 (Cert. denied 281 U. S. 728), the Court refused to grant an injunction under circumstances which the present petitioner purports to find similar to those in the present case, but which are obviously radically different. The plaintiff there obtained annually at considerable cost a large number of silk patterns for the ensuing season. The defendant copied such patterns as proved to be popular and sold them without any passing off. The defendant asked an injunction against such copying of its patterns to apply for the duration of the season. The Court refused to extend the doctrine of the *International News Service* case to the case before it. The patterns in question were concededly not such as could be protected by copyright. We think the protection of silk patterns from copying or near-copying presents practical difficulties of an obvious nature which do not exist with respect to the protection of live news. Furthermore, while it might fairly be said that a substantial extension of the *International News Service* case would be necessary in order to cover the *Cheney Bros.* case, no real extension is necessary to cover the present case.

Petitioner refers to *Reichelderfer* v. *Quinn*, 287 U. S. 315, as confirming the limitation upon the scope of the *International News Service* case (Petition, pp. 18, 19). But the *Quinn* case merely held that adjoining owners acquired no right to have Rock Creek Park in Washington remain a park. This Court said (p. 319):

> "Beyond the traditional boundaries under common law only some imperative justification in policy will

lead the courts to recognize in old values new property rights. Cf. International News Service vs. Associated Press, 248 U. S. 215 with Cheney Bros. vs. Doris Silk Corporation 35 F. (2d) 279."

That this Court has not repudiated or limited the doctrine of the *International News Service* case is apparent from the *Schechter* case (295 U. S. 495, 531-2) in which this Court, in discussing the meaning of "Codes of Fair Competition", pointed out that the doctrine of unfair competition is not confined to cases of "palming off", but applies to "misappropriation as well as misrepresentation, to the selling of another's goods as one's own—to misappropriation of what equitably belongs to a competitor", citing the *International News Service* case.

In the following cases the unfairness consisted in an encroachment upon the plaintiff's good name or good will although there was no competition.

Peninsular Chemical Co. v. *Levinson*, 247 Fed. 658 (C. C. A. 6);
American Products Co. v. *American Products Co.*, 42 Fed. (2d) 488;
Vogue Company v. *Thompson-Hudson Co.*, 300 Fed. 509 (C. C. A. 6);
Wisconsin Electric Co. v. *Dumore*, 35 Fed. (2d) 555 (Cert. denied 282 U. S. 218);
Wall vs. *Rolls-Royce of America*, 4 Fed. (2d) 333;
Fox Company v. *Glynn*, 191 Mass. 344, 78 N. E. 89;
Walter Baker & Co. v. *Sanders*, 80 F. 889.

In *Borden's Ice Cream Co.* v. *Borden's Condensed Milk Co.*, 201 F. 510, cited in this connection by petitioner (Petition, p. 16), there was no competition since one party was selling ice cream (or about to sell ice cream) and the other milk; and the only question remaining, therefore, was whether the defendant was injuring the plaintiff by use of the name "Borden" in a non-competitive business. That such an injury may be actionable has been repeatedly held.

In the following cases the unfairness consisted in labor activities such as picketing and boycotting, which lacked

the justification of reasonable advancement of the defendant's own interests; and in these cases there was, of course, no competition, no passing off, and no appropriation of profits.

Steinert and Sons v. *Tagen*, 207 Mass. 394 (93 N. E. 584);
American Foundries v. *Tri-City Council*, 257 U. S. 184;
Casey v. *Cincinnati Typographical Union*, 45 Fed. 135;
Gray v. *Building Trades Counsel*, 91 Minn. 171 (97 N. W. 663).

In the following cases the unfairness consisted in libelous statements affecting the plaintiff's business.

Dehydro Inc. v. *Tretolite Co.*, 53 Fed. (2d) 273;
Farquhar Co. v. *National Harrow Co.*, 102 Fed. 714 (C. C. A.)

In *Davis* v. *New England Railway Publishing Co.*, 203 Mass. 470 (89 N. E. 565), the unfairness consisted in the wilful exclusion of plaintiff's name from a trade directory of reputable express companies. On demurrer, the Court held that the plaintiff was entitled to equitable relief on the ground that the exclusion of plaintiff's name constituted an unjustifiable injury to plaintiff's business. Obviously the defendant was not competing with the plaintiff, and, so far as appeared, he derived no profit from the exclusion of plaintiff's name.

In the following cases the unfairness consisted in the fact that the defendant's acts, although such as would be justifiable if they constituted genuine competition, were in fact unjustifiable because they constituted a merely simulated competition, the real purpose of which was to injure or destroy plaintiff's business.

Tuttle v. *Buck*, 107 Minn. 145 (119 N. W. 946);
Dunshee v. *Standard Oil Co.*, 152 Iowa 618 (132 N. W. 371), affd. 165 Iowa 625;

Boggs v. *Duncan-Schell Furniture Co.,* 163 Iowa 106 (143 N. W. 482).

A large number of cases involving unfair interference with lawful business are collected in Chapters 12 and 19 of Nims on Unfair Competition, Third Edition, the latter chapter being cited in the *Schechter* case, *supra.* The general question of interference with business as a cause of action, and the extent to which the defendant's furtherance of his own interests is a justification, were considered at length in *Mogul Steamship Co.* v. *McGregor,* 23 Q. B. D. 598, in which the Court said (p. 613):

> "Now, intentionally to do that which is calculated in the ordinary course of events to damage, and which does in fact damage another in that person's property or trade, is actionable if done without just cause or excuse."

and see *Parkinson Co.* v. *Trades Council,* 154 Cal. 581 (98 Pac. 1027), and *Huskie* v. *Griffin,* 75 N. H. 345 (74 Atl. 595).

We think it is manifest that the doctrine of the foregoing cases demonstrates the right of the present complainant to injunctive relief. Regarded from the standpoint of unfair interference with complainant's business, it is obvious, in the first place, that there is an interference with plaintiff's business by the defendant. This is not a case where the *fact* of interference can be disputed by showing that defendant is not competing, is not "passing off", is not misleading the public or is deriving no profit. From an objective standpoint, the factual interference remains the same whether the defendant's activities are to be described as an appropriation, competition, or pure beneficence. Furthermore, the factual interference is of the same nature as the interference enjoined in the *International News Service* case, *supra.* In the second place, turning to the justification, the defendant is either competing or not competing with the complainant. If the defendant is competing, this furnishes a *prima facie* justification; but the justification is defeated because the defendant's activities in pirating and disseminating news constitute an unfairness of the same nature as that involved in the *In-*

ternational News Service case. If the defendant is not competing, then the unfairness remains, but without even the colorable justification of a competitive interest.

D. THE DEFENDANT'S INTERFERENCE WITH COMPLAINANT'S BUSINESS IS NOT JUSTIFIED BY ANY PUBLIC INTEREST.

Petitioner devotes considerable space to the matter of the public interest in the wide and rapid dissemination of news. As the Circuit Court of Appeals said in this connection (R. p. 562):

> "In its final analysis this argument of KVOS to sustain the dismissal rests on the proposition that the bill in International News Service v. Associated Press, supra, would have been dismissed by the Supreme Court if the International News Service's members then had had a much faster distribution of the pirated news and had relied entirely on advertising income from their papers."

There is no point in the discussion of this public interest unless it is assumed that respondent has some right which would be protected but for the alleged public interest. More specifically the issue comes down to this. Petitioner is obliged to concede that the Associated Press (and its members) are entitled, under the *International News Service* case, to the protection of their business of disseminating their gathered news as against a news agency which, acting as a middleman, distributes news pirated from the respondent to the direct disseminators of news; but petitioner contends that the public interest prevents the extension of this doctrine to the protection of the business against a direct disseminator himself (and it may be remarked that the petitioner claims to be, in part, a news gathering agency, as found by the Court below, R. p. 511).

The Circuit Court of Appeals in its opinion (R. p. 571) says:

> "So far as concerns the case against piracy presented by the bill, the speed of the radio's distribution of news makes the injury done the press in the performance of its business and civic activities the more effective and certain."

Public interest might be better served by competition in the independent gathering of news than by the pilfering by one news gatherer from another.

Petitioner discusses at some length the "German" case in which a newspaper, obtaining news of the Graf Zeppelin from the radio station's broadcast, thereafter published the news in a special issue of its paper and the Court refused to grant an injunction against such use of broadcast news (Petition pp. 12, 33-40, 50). That case is not controlling here because the dissemination of the news by the radio station which was the owner of the news had been completed when the newspaper had "lifted and published" the news, and hence it might well be argued that there was no encroachment upon the radio station's dissemination of the news. The German Court also based its reasoning in part upon the fact that news as such was not copyrightable in Germany; and recognized no distinction between the law of copyright and the law of unfair competition such as this Court definitely recognized in the *International News Service* case. Thus, the German Court would apparently have decided against The Associated Press in the *International News Service* situation on the ground that the Press, having no copyright, could have no other protection.

In this connection, it may be noted that petitioner urges (Brief pp. 13, 52) that the Courts should not grant relief because Congress refused to legislate upon this matter in 1884, and suggests that legislation is needed before the Court can grant the requested relief. Perhaps one reason against legislative protection is that equity can afford the necessary protection—and more flexibly according to the circumstances, and it may be added that the argument based on the bill before Congress in 1884 was unsuccessfully urged on this court in the *International News Service* case, 248 U. S. 215, 264, 265.

POINT IV.

The preliminary injunction was rightfully granted.

It is not altogether clear that petitioner even intends to bring the question of the preliminary injunction before this Court. Petitioner's statement of the scope of its argument (Brief, p. 29) seems to indicate that it does not. However, the brief and petition are full of references to matters not open to consideration on the motion to dismiss the bill, and perhaps we must therefore draw the inference that the petitioner means to attack the preliminary injunction should the bill of complaint be upheld.

The motion for a preliminary injunction was submitted on affidavits. Those in behalf of The Associated Press described one hundred eighty-two piratings by defendant petitioner in which appear one hundred fifty-three articles containing four hundred twenty-five identical paragraphs pirated by KVOS (R. pp. 73-465). Besides this there were twenty-seven broadcasts similar to the news items from which they were alleged to be rewritten.

The District Court held (R. p. 480) the showing as to "piracy" was clear and convincing. The Circuit Court of Appeals said (R. p. 575-579) that the record showed continued pirating. Since defendant petitioner refused to desist from its practice after repeated requests (R. p. 15, 28-30), the preliminary injunction was proper.

The Circuit Court of Appeals in its opinion (R. pp. 579, 580) compares the record here with that in the *International News* case on the preliminary injunction, saying

> "the preliminary injunction there granted was ordered sustained by the Supreme Court on a showing much less comprehensive and detailed than in the record here. Less than thirty instances of piracy are there described as compared with over five times that number here."

It appears, as pointed out by that Court (R., p. 577), that the piracies continued up to the time of the institution of this action. And as said in the opinion of the Circuit Court of Appeals (R. pp. 579, 580)

> "It appears, and it is not denied, that complainant's income from its distribution of its news to the papers serving KVOS' radio area is $6,000 per month, or $72,000 per annum. Since the thirty cases of piracy were sufficient to show a threatened damage warranting a preliminary injunction in the International case the one hundred fifty-three are sufficient here. The Supreme Court there, without evidence of the loss of a subscriber, took notice that such a practice threatened harm to the circulation of the association's member papers requiring injunctive relief. We take similar notice here that such pirating may well affect both their subscriber and advertising income."

In an attempt to show that the occasion for an injunction is trivial, the petitioner asserts that its station has "at the most" a range limited within "a five-mile radius" (Petition, p. 1). There is no foundation in the record for this amazing statement. Quite to the contrary, petitioner's own affiant, L. H. Darwin, states under oath that the petitioner's "Newspaper of the Air" (Tr., p. 66):

> "* * * reaches a greater audience than any newspaper could do so, in that the people on farms in the Counties of Whatcom, Skagit, San Juan, Snohomish and Island depend almost exclusively upon this informative news service for information on news and political events * * *"

It will be seen, from any standard atlas, that the nearest point in Snohomish County is more than thirty miles from Bellingham, while the furthest point is more than ninety miles away.

CONCLUSION.

Respondent submits that the decision of the Circuit Court of Appeals was correct and in accord with the weight of authority, and that there is an entire absence of any of the requisite reasons for awarding a writ of certiorari. The writ should be denied.

Respectfully submitted,

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CHARLES ELMORE

IN THE

Supreme Court of the United States.

October Term, 1936.

No. 28.

KVOS, INC.,

Petitioner,

vs.

THE ASSOCIATED PRESS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF RESPONDENT THE ASSOCIATED PRESS.

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THE BALLOU PRESS NEW YORK

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

KVOS, INC., Petitioner, vs. THE ASSOCIATED PRESS, Respondent.	No. 28.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF ON BEHALF OF THE ASSOCIATED PRESS.

Opinions Below.

The Associated Press v. *KVOS, Inc.*, 9 F. Supp. 279 (R. 465-493), 80 Fed. (2d) 575 (R. 556-581).

Jurisdiction.

Certiorari was granted on May 18, 1936, under Judicial Code §240(a), as amended by the Act of February 13, 1925.

Questioned Presented.

The basic question presented is whether The Associated Press, a news gathering association, is entitled to equitable protection against the piracy of its news items by a broadcasting station where the piracy is effected by taking such items upon first publication and broadcasting them before

the association and its members have had an opportunity to disseminate them by normal newspaper methods.

The question involves the following considerations:

(1) Can the case of *International News Service* v. *The Associated Press*, 248 U. S. 215, be validly distinguished from the present case by reason of the fact that the defendant in that case *(International News Service)* was a news gathering agency rather than a direct disseminator of news, while the defendant in this case (KVOS) is a direct disseminator of news by means of radio broadcasting?

(2) Assuming there is no valid distinction between the two cases, is the *International News Service* case still law?

(3) Irrespective of the *International News Service* case, is The Associated Press entitled to equitable protection against interference with its business where such interference cannot be justified either as fair competition or otherwise?

Statement of the Case.

The bill of complaint alleges that the complainant, The Associated Press, is a New York membership corporation with more than 1200 members, each owning or representing a daily newspaper in the United States; that the complainant is engaged, for the benefit of its members, in gathering news from all over the world by its own instrumentalities, by exchange with its members, and by interchange with or purchase from other news agencies; that the cost of gathering news and distributing the same to its members, amounting to many millions of dollars a year, is assessed upon its members; and that the general news gathered by complainant as well as the local news gathered by its members is by mutual agreements, set forth in the by-laws, restricted to the members for the purposes of regular publication in newspapers owned by them (R. pp. 2 to 6).

The bill further alleges that the defendant KVOS, Inc., is a corporation of the State of Washington, engaged at Bellingham, Washington, in the business of radio broadcasting for profit, the profit being derived by sale of time for advertising purposes; that during three half hour periods daily, the defendant broadcasts a so-called "Newspaper of the Air", in the course of which, interspersed with paid advertising, it systematically reads, verbatim or in slightly rearranged form, the most important and interesting items of news obtained from the latest editions of three newspapers which are published by members of the complainant The Associated Press, namely, The Bellingham Herald, the Seattle Post-Intelligencer, and The Seattle Daily Times; and that the news so "pirated" by the defendant is news gathered by the complainant and by its members within the terms of the membership agreements above mentioned.

The bill of complaint further alleges that the defendant and several members of the complainant serve much the same territory in the dissemination of such news, the territory served by defendant extending "for a radius of seventy-five to one hundred miles from the said City of Bellingham"; that the defendant and the members of the complainant disseminate news in order to increase the value of their respective mediums for advertising purposes, the defendant making its profit out of the sale of time to advertisers and the members of complainant making their profit largely out of the sale of space to advertisers; that the defendant, by pirating news so gathered by complainant and its members and broadcasting the same, makes the news known to the general public several hours in advance of the time when newspapers published by members of complainant can reach their actual or potential subscribers; that this practice of defendant is an appropriation of the product of the industry of complainant and its members and constitutes unfair competition; that it works a direct and irreparable injury to complainant and its members; and that the complainant has frequently requested the defendant to desist from the said practice, but that defend-

the association and its members have had an opportunity to disseminate them by normal newspaper methods.

The question involves the following considerations:

(1) Can the case of *International News Service* v. *The Associated Press*, 248 U. S. 215, be validly distinguished from the present case by reason of the fact that the defendant in that case *(International News Service)* was a news gathering agency rather than a direct disseminator of news, while the defendant in this case (KVOS) is a direct disseminator of news by means of radio broadcasting?

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ant has refused to desist and intends to continue the practice. The bill of complaint thereupon asks relief by temporary and permanent injunction (R. pp. 16-17).

The bill of complaint not only alleges the jurisdictional diversity of citizenship as above noted, but also alleges that the amount involved exceeds $3,000, exclusive of interest and costs (R. pp. 2, 3).

The complainant moved, by show cause order containing a temporary restraining order, for a preliminary injunction (R. pp. 37 to 40); and the portion of the Record particularly relating thereto embraces pages 18-41, 45-465. The defendant moved to dismiss the bill of complaint on the ground that it does not recite facts sufficient to entitle complainant to the relief prayed for and on other detailed grounds (R. pp. 42 to 44). The defendant's motion to dismiss was granted (with prejudice) and, as a necessary consequence, the complainant's motion for a preliminary injunction was denied by a decree and order of the District Court (R. pp. 516 to 518). The Circuit Court of Appeals reversed the District Court, reinstating the bill of complaint and directing the issuance of a preliminary injunction (R. pp. 581-582).

Summary of Argument.

I. *The bill of complaint adequately alleges that the requisite jurisdictional amount is involved.* This is in answer to petitioner's contention that such amount is not shown to be involved.

II. *The bill of complaint adequately discloses the respondent, The Associated Press, as the proper party to bring this action.* This is in answer to the petitioner's contention that the requisite diversity of citizenship is not shown since the complainant The Associated Press is not the real party in interest and the joinder of the real parties in interest would have destroyed diversity of citizenship.

III. *The bill of complaint states facts sufficient to constitute a cause of action for a permanent injunction; and the Circuit Court of Appeals properly reversed the decree of the District Court dismissing the bill.*

A. The complaint states a cause of action based on defendant's unfair competition in the advertising and news fields.

B. The complaint states a cause of action based on defendant's infringement of a property right in news.

C. The complaint states a cause of action based on defendant's interference with a lawful business without justification.

D. The defendant's interference with complainant's business is not justified by any public interest.

IV. *The preliminary injunction was rightfully granted.*

It may be remarked at the outset that we think all of the important principles involved in the present case were settled in *International News Service* v. *Associated Press,* 248 U. S. 215, and that the Circuit Court of Appeals correctly followed and applied the decision in that case.

It may further be noted that the petitioner, in its petition and brief*, repeatedly overlooks the elementary fact that its motion to dismiss is directed solely to the allegations of the complaint and is not affected by the affidavits and findings, which are to be considered only upon the motion for the preliminary injunction. We gather that the petitioner intended, in a general way, to confine its petition to the questions arising out of the motion to dismiss; however, since the argument seems to escape these seemingly intended bounds at many points, we have included a brief statement with respect to the motion for a preliminary injunction.

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*We are informed that petitioner is resting on the petition and supporting brief upon which it applied for the writ of certiorari.

POINT I.

The Bill of Complaint adequately alleges that the requisite jurisdictional amount is involved.

The complaint alleges that the amount involved in the controversy, exclusive of interest and costs, is in excess of $3,000 (R. p. 3). This allegation is controlling for the purpose of the motion to dismiss the bill.

> Opinion of District Court herein, 9 F. Supp. 279, 284; R. p. 477;
>
> Montgomery, Federal Jurisdiction & Procedure, 3 Ed. §§207, 210.

Petitioner suggests that the lack of the requisite jurisdictional amount is shown by the trifling amount of pirating disclosed in the affidavits submitted on the motion for a preliminary injunction. Insofar as this suggestion bears on that motion, we shall deal with it under Point IV. It is sufficient under the present point to note that the affidavits cannot be considered upon the motion to dismiss the bill.

Petitioner further suggests that the lack of the requisite jurisdictional amount appears upon the face of the bill since the complainant's business is shown to be of a non-profit nature. It is true that The Associated Press makes no profit. It is a membership corporation which meets its expenses by assessments upon its members. But the fact that a corporation does not make a profit does not mean that it cannot be damaged. Furthermore, as stated under the succeeding point, The Associated Press is a proper party to sue on behalf of its members; and it is apparent that the value of the right and interest of the members, properly to be protected in this action, is in excess of $3,000 as alleged in the complaint. The real interest of the respondent and its members as outlined in the complaint (R. pp. 4, 5) is unquestionably in excess of $3,000 under the principle that the jurisdic-

tional amount is to be tested, in such a case as the present, by the value of the right sought to be protected and not by the immediate pecuniary amount involved. The respondent seeks to protect news in the collection of which it expends many millions of dollars (R. p. 4).

Opinion of C. C. A. herein, 80 F. (2) 575, 579; R. pp. 563-565;

Montgomery, Federal Jurisdiction & Procedure, §208 (and cases cited);

Bitterman v. *Louisville & N. R. R.*, 207 U. S. 205, 225;

Local No. 7 of Bricklayers Union v. *Bowen*, 278 F. 271;

Herbert v. *Rainey*, 54 F. 248;

King v. *Kansas City Police Relief Association*, 60 F. (2d) 547.

It is further to be noted that the non-profit nature of the respondent's business was set forth in *International News Service* v. *Associated Press*, 248 U. S. 215, in substantially the same terms as in the present case; and this Court nevertheless assumed without question that the requisite jurisdictional amount was there involved.

POINT II.

The Bill of Complaint adequately discloses the respondent, The Associated Press, as the proper party to bring this action.

The petitioner argues that The Associated Press is not the real party in interest and that a joinder of the real parties in interest would destroy the requisite diversity of citizenship.

The petitioner bases this argument primarily on the theory that The Associated Press cannot have an interest in the controversy since it operates without profit, merely assessing the cost of its operations upon its members. In view of the

structure of The Associated Press and its relationship to its members, we think a court of equity will recognize that, whether or not the corporation is itself a business concern, it is operated and maintained by its members as an auxiliary business enterprise. Under its by-laws all news furnished to members or gathered by members belongs to The Associated Press. It is designed to maintain a trained and efficient organization for the gathering of news and, to this end, to derive the necessary income to employ and adequately remunerate a staff of experts. For all practical purposes it is in obvious and keen competition with other news gathering agencies as was recognized by the Supreme Court in the *International News Service* case (248 U. S. 215). In that case the record showed The Associated Press's method of operation precisely as alleged in the present bill of complaint. Its members are its customers, and there would be no point in collecting profits from them in order to return the profits as dividends.

Quite aside from the respondent's interest as a business concern, the respondent is a proper party to sue on behalf of the various newspaper members. When the question is one of common or general interest to many persons constituting a class, one or more may sue for the whole (Fed. Eq. Rule No. 38, Hopkins 6 ed., p. 226). It is well settled that classes of persons similarly situated may be represented by an association or organization such as the respondent herein (*Merchants Association* v. *United States,* 231 Fed. 292; Foster's Fed. Pr., 6 ed., sec. 114). In the *International News Service* case this Court expressly held that the "complainant is a proper party to conduct the suit as representing their (the members') interest * * *" (248 U. S. 215, 233).

The petitioner argues, however, that the present case involves no general interest on the part of similarly situated parties, but concerns only one or at the most three newspapers (Petition, pp. 8, 17); and that these papers are necessary parties if not the only proper parties complainant. While they might have been proper parties they are not necessary parties since the case does not deal with any right or damage which is limited to the three newspapers. The

complaint alleges that numerous other members of respondent within the territory in question are injured (R. p. 13). Furthermore, in showing the general operation and structure of The Associated Press, the complaint clearly shows that its more than 1200 members (R. p. 4) are interested in the protection of The Associated Press as their mutual agency for the competitive collection and distribution of news. As heretofore pointed out, the news gathered by the individual members belongs, for the purposes of general dissemination, to the association. The petitioner persistently ignores this fact in its attempt to picture the controversy as a local one between the Bellingham Herald and itself.

Both the District Court and the Circuit Court of Appeals held that there was no defect of parties complainant in this case.

> Opinion of District Court, 9 F. Supp, 279, 284; R. p. 478;
> Opinion of C. C. A., 80 Fed. (2d) 575, 579-580; R. pp. 566-568.

As pointed out in the latter opinion, the question here under consideration has been decided adversely to the petitioner in the *International News Service* case (248 U. S. 215).

POINT III.

The Bill of Complaint states facts sufficient to constitute a cause of action for a permanent injunction; and the Circuit Court of Appeals properly reversed the decree of the District Court dismissing the bill.

No distinction of importance can be drawn between the present case and *International News Service* v. *The Associated Press*, 248 U. S. 215. The petitioner attempts to meet the *International News Service* case partly by dwelling on

various differences, of no importance in principle, between newspapers and broadcasts, partly by stubborn adherence to the dissenting views rejected in the prevailing opinion of this Court, and partly by a repetitious misstatement of the holding of the majority of this Court. Furthermore, while we cannot find that petitioner has anywhere stated what this Court did hold, we gather that it does not agree with the holding.

In the present case, the allegation is that defendant petitioner pirates The Associated Press news by taking the same from newspapers, published by members of The Associated Press, after publication but before distribution in ordinary course, and by disseminating the same by radio broadcasts. The petitioner repeatedly asserts that, accordingly, it obtained the news rightfully; and that this fact distinguishes the present case from *International News Service* case in which, petitioner repeatedly asserts, the news was obtained wrongfully, namely, by bribery and like methods. The simplest way to dispose of this misstatement is to quote from the opinion of this Court (248 U. S. 215, 231):

> "The bill was filed to restrain the pirating of complainant's news by defendant in three ways: First, by bribing employees of newspapers published by complainant's members to furnish Associated Press news to defendant before publication, for transmission by telegraph and telephone to defendant's clients for publication by them; Second, by inducing Associated Press members to violate its by-laws and permit defendant to obtain news before publication; and Third, by copying news from bulletin boards and from early editions of complainant's newspapers and selling this, either bodily or after rewriting it, to defendant's customers."

After pointing out that the matters arising under the first and second heads (bribery and inducing violations of by-laws) had been disposed of in the courts below (by the granting of a preliminary injunction) this Court said (p. 232):

> "The only matter that has been argued before us is whether defendant may lawfully be restrained from ap-

> propriating *news taken from bulletins issued by complainant or any of its members, or from newspapers published by them,* for the purpose of selling it to defendant's clients. * * * As presented in argument, these questions are: 1. Whether there is any property in news; 2. Whether, if there be property in news collected for the purpose of being published, it survives the instant of its publication in the first newspaper to which it is communicated by the news-gatherer; and 3. Whether defendant's admitted course of conduct in appropriating for commercial use matter taken from bulletins or early editions of Associated Press publications constitutes unfair competition in trade." (Italics ours.)

It was upon these questions that this Court affirmed the order of the Circuit Court of Appeals granting a preliminary injunction under the third head (the taking of news from bulletins and published papers). Thus, there was no distinction whatever, in the manner of obtaining news, between the *International News Service* case (so far as this Court was called upon to decide) and the present case. In each case the news was obtained rightfully. In each case the point is that the defendant *wrongfully used* the news although *rightfully obtained.*

A. The Complaint States a Cause of Action Based on Defendant's Unfair Competition in the Advertising and News Fields.

For the purposes of a motion to dismiss, the allegations of the bill must of course be taken as true. The petitioner, without any regard to whether its argument is addressed to the motion to dismiss or to the motion for a preliminary injunction, volunteers the statement that the petitioner's station is a small 100-Watt station with a sending radius of only five miles (Petition, p. 1, and elsewhere); that on this account it could not compete with any of the member newspapers of The Associated Press, except the Bellingham Herald, and that even the Circuit Court of Appeals found that the news items taken from this paper were "but twelve in number over the course of a year" (Petition, p. 17).

As will later appear, these volunteered statements have no foundation in the record, even as applied to the motion for a preliminary injunction. Much less can they be considered upon the motion to dismiss. The allegation of the complaint is that the territory served by the petitioner's station extends for a radius of 75 to 100 miles from the City of Bellingham, and that numerous member newspapers of The Associated Press, including the three specifically mentioned in the complaint, serve the same territory to a greater or lesser extent (R. p. 13).

Regarding The Associated Press and its member newspapers as identical so far as the right to injunctive relief is concerned, the allegations of the complaint show that it and the defendant are engaged in competition in the advertising field. The complainant's members and the defendant each sell advertising facilities to advertisers, the complainant's members selling space in their advertising mediums, while the defendant sells time on its advertising medium. In the case of each business, the advertising medium obtains a substantial part of its advertisement-carrying power from news. In the conduct of its advertising business, the defendant appropriates or pirates and broadcasts news gathered by the complainant and its members, and thereby impairs the carrying power of the advertising mediums of the complainant's members.

The District Court held (R. pp. 484 to 485) that no competition exists between newspaper publishers and broadcasting stations, because the newspaper publisher sells his paper to the public at a nominal price while the broadcaster charges the public nothing. We think this position overlooked the plain facts of the case, and proceeded upon an unduly narrow interpretation of the word "competition." In reversing the District Court, the Circuit Court of Appeals effectively disposed of the position thus taken by the lower Court (80 F. (2d) 575, 581-582; R. pp. 571-574).

It is a well recognized fact, and it is alleged in the bill (R. p. 9), that newspapers derive the larger part of their revenue from advertising rather than from the sale of their

papers to the public. A large circulation is essential in order to attract advertisers; and, in order to obtain a large circulation, attractive and complete news reports are vital (R. p. 9).

In the same way, in the radio field, the broadcaster receives his revenue from the sale of advertising time or sponsored programs; and in order to attract advertisers it is essential to have a large listening audience. It is a matter of public knowledge that the broadcaster, in addition to the sponsored programs for which he is paid, often broadcasts, without allocated charge, some feature (whether news or otherwise) which he thinks will appeal to the public and thus increase the popularity of the station (R. pp. 8, 9).

Thus the newspaper publisher and the broadcaster are in direct commercial competition with each other in their endeavor to attract and retain paid advertising by widening the circle of those whom they reach.

It is merely viewing the situation from another angle to say that The Associated Press members and the petitioner are likewise competing in the business of disseminating news. In each case the dissemination of news is an integral part of the business of the respective parties, whether the newspaper or the broadcasting business. The newspaper disseminates news as part of a commercial enterprise; and obtains a return by charging its advertisers. In the conduct of its news disseminating business the defendant appropriates or pirates and broadcasts news gathered by the complainant and its members and thereby competes unfairly and directly with the complainant members.

In *Associated Press* v. *Sioux Falls Broadcast Association* (U. S. D. C. for Dist. of S. D. March 14, 1933, Elliott, District Judge) the facts were on all fours with those of the present case and the Court there granted such relief as is sought herein.*

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* No opinion was rendered in the *Sioux Falls* case nor is the case reported, but copies of the findings and conclusions were submitted to both lower courts herein on argument. A similar case, likewise unreported, is *New Orleans Times Picayune, et al.* v. *Uhalt* (N. Y. Times, June 30, 1933) in which plaintiffs were granted a twenty-four hour injunction against use of news from their newspapers for defendant's broadcasting purposes.

In *International News Service* v. *Associated Press* (248 U. S. 215), The Associated Press was granted an injunction similar to that sought in the present case. As heretofore stated we think that case is not distinguishable in principle from the present case. There as here the complainant was The Associated Press. Its status as a membership corporation and its relation to its members were set forth as in the present case. The defendant International News Service was likewise engaged in the gathering of news and the distribution thereof to newspapers; but the International News Service was not a membership corporation, and operated for a profit on its own account by charging its subscribers for its service and not by assessing members as did The Associated Press. The case involved the piracy of news by the taking of news items from papers of Associated Press members upon first publication and by the commercial distribution of such items.

On the question of unfair competition this Court there said (248 U. S. 215, 240-241):

> "The contention that the news is abandoned to the public for all purposes when published in the first newspaper is untenable. Abandonment is a question of intent, and the entire organization of the Associated Press negatives such a purpose. The cost of the service would be prohibitive if the reward were to be so limited. * * * Their effect (complainant's by-laws) is that publication by each member must be deemed not by any means an abandonment of the news to the world for any and all purposes, but a publication for limited purposes; for the benefit of the readers of the bulletin or the newspaper as such; not for the purpose of making merchandise of it as news, with the result of depriving complainant's other members of their reasonable opportunity to obtain just returns for their expenditures."

Referring to the news, this Court said (p. 240):

> "* * * It has all the attributes of property necessary for determining that a misappropriation of it by a com-

petitor is unfair competition because contrary to good conscience."

We think it is apparent that the advertising and news disseminating phases of the respective businesses (newspaper and broadcasting) cannot be divorced, that the defendant broadcasts news for profit, even though it obtains its return indirectly from advertisers, and that accordingly the complainant's members and defendant are competing commercially in the dissemination of news. As a statement of fact, we think the foregoing is too obvious for argument. Insofar as legal questions are involved, the following cases support the proposition that petitioner was operating for a profit in its news broadcasts even though it collected from others than the listeners.

Herbert v. *Shanley Co.* (1917), 242 U. S. 591;
Buck v. *Jewell-LaSalle Realty Co.*, 283 U. S. 191;
Remick v. *American Automobile Accessories Co.*, 5 F. (2d) 411 (Cert. denied 269 U. S. 556);
Remick v. *Bamberger & Co.*, 291 F. 776;
Dreamland Ballroom, Inc. v. *Shapiro, Bernstein Co.*, 36 F. (2d) 354 (citing cases);
Notes, 40 A. L. R. 1513; 66 A. L. R. 1366;
Sarpy v. *Holland* (1908), 2 Ch. 198.

In the *Shanley* case, this Court held that the defendant, in employing an orchestra to render a musical composition in its restaurant without any specific charge to the customers for the music, was performing the composition "for profit" within the meaning of the copyright statute. This Court said (pp. 594, 595):

> "The defendants' performances are not eleemosynary. They are part of a total for which the public pays, and the fact that the price of the whole is attributed to a particular item which those present are expected to order, is not important * * * If music did not pay it would be given up. If it pays it pays out of the public

pocket. Whether it pays or not the purpose of employing it is profit and that is enough."

Needless to say, the petitioner misconceives the applicability of this case in distinguishing it as a copyright case (Brief, pp. 30-31). It is cited merely as showing by analogy that petitioner's news broadcasts are an integral part of their commercial enterprise and, in the sense here pertinent, cannot be regarded as gratuitous. Upon the principle of the *Shanley* and other like cases above cited, we think it is clear that the petitioner is in competition with The Associated Press and its members, even though the petitioner finds itself unable to make any charge directly against its listeners. The Circuit Court of Appeals so held, and we think its decision is unassailable.

The petitioner assumes (incorrectly, as pointed out under subhead C, infra) that the complaint cannot be upheld unless it makes out a case of actual competition. To this assumption, the petitioner adds the further assumption that the competition must be substantial in the sense and degree pertinent in cases arising under the Federal Trade Commission and the Clayton Acts.

We have already referred to the fact that the petitioner asserts, utterly without foundation, that its station is effective only within a radius of five miles; and to the fact that the complaint states the radius as from seventy-five to one hundred miles.

The petitioner expands its general effort to minimize the competition by arguing (Petition, pp. 13, 14, 16) that it consumes only ten percent of its time in news broadcasts; and thereupon attempts to draw an analogy from Federal Trade Commission and Clayton Act cases. Petitioner overlooks the distinction between the general law of unfair competition as between individuals and the statutory law in the public interest under which the Commission acts—a distinction which the courts have repeatedly emphasized.

15 U. S. C. A. section 45, and notes, particularly page 262;

Schechter Poultry Corp. v. *United States,* 295 U. S. 495;

Raladam Co. v. *Federal Trade Commission,* 283 U. S. 643 (affirming 42 F. (2d) 430, q. v. at p. 436).

In *International Shoe Company* v. *Federal Trade Commission* (280 U. S. 291) (Petition pp. 9, 16) the question arose under the Clayton Act as to whether the Shoe Company's acquisition of the stock of another Company was such as "to substantially lessen competition" within the prohibition of that act. The percentage of competition relevant under that Act has nothing to do with the question of private rights involved in the present case.

In a case of unfair competition, the extent of defendant's business has no bearing. Thus complainants' right to enjoin infringment of their trade-names is unaffected by the amount of business done by defendant. (*Garcia* v. *Garcia,* D. C. Wisconsin, 197 F. 637 at 641).

B. The Compaint States a Cause of Action Based on Defendant's Infringement of a Property Right in News.

The petitioner repeatedly states in substance that this Court, in the *International News Service* case, *supra,* held that neither The Associated Press nor any of its members had any property right in news reports after the instant of their first publication. The assertion would seem to be specifically controverted by the language of this Court. As between the parties engaged in the commercial use of fresh news, this Court stated that news as news "must be regarded as quasi property, irrespective of the rights of either as against the public" (pp. 236-237). Again this Court refers to news as "salable material" and, as such, susceptible of mis-appropriation (p. 239). Again, referring to news, this Court says (p. 240):

> "But in a court of equity, where the question is one of unfair competition, if that which complainant has ac-

quired fairly at substantial cost may be sold fairly at substantial profit, a competitor who is misappropriating it for the purpose of disposing of it to his own profit and to the disadvantage of complainant cannot be heard to say that it is too fugitive or evanescent to be regarded as property. It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience."

In view of this language, it is scarcely necessary to deal with petitioner's volatile argument that "in order to sustain the Circuit Court's decision this Court is called upon to affirm a general and absolute property right in published and distributed news, as such" (Brief, p. 21).

The substantial identity of the question involved in the *International News Service* case, perhaps renders it superfluous to go further afield for analogies. There is, however, a long line of cases in which the courts have held that the gatherer and distributor of specialized items of news, when gathered for limited distribution to subscribers who desire the service for commercial use, has such a property right in the gathered items (as long as they are commercially live news) as to afford a basis for equitable protection against a defendant who utilizes the items not for the purposes for which they are distributed by the plaintiff, but for the purpose of commercial retransmission to such subscribers or purchasers as the defendant obtains as his own customers. It is deemed sufficient to cite three of these cases, namely, *Board of Trade* v. *Christie Grain & Stock Company*, 198 U. S. 236, *Hunt* v. *N. Y. Cotton Exchange*, 205 U. S. 322 and *National Telegraph News Company* v. *Western Union Telegraph Company*, 119 Fed. 294. The *Christie* and *Hunt* cases involved stock quotations transmitted by ticker; and the *Western Union* case involved miscellaneous news items also transmitted by ticker. In each action the defendant contended that the dissemination of the information by ticker was a publication to the world or a "dedication" to the public; but the plaintiff was held entitled to an injunction against the defendant's use of such items for commercial retransmission and as long as the items constituted live news.

The District Court in the present case distinguished such cases on the ground that there was a use of the items by the respective defendants in violation of contract or by way of inducing a breach of trust on the part of some receiver of such items (R., p. 487). But this same distinction was made by Mr. Justice Brandeis in his dissenting opinion in the *International News Service* case (248 U. S. 215, 251-252); although he recognized that the language of the cases went further. The majority of this Court refused to accord these cases such a limited significance, however, and cited the *Christie* and *Western Union* cases, *supra*, for the general proposition that the service of purveying such news was a business "partaking of the nature of property in a sense that entitled" the purveyor "to the protection of a court of equity against piracy" (p. 238).

That equity recognizes various intangible rights as qualified property rights is illustrated in *Fisher* v. *Star Company*, 231 N. Y. 414. This was an action by the creator of the Mutt and Jeff cartoon characters to enjoin the publication of imitative cartoons which used Mutt and Jeff as their subjects, although without actual copying of the plaintiff's cartoons. In granting an injunction the Court said (p. 428):

> "Any civil right not unlawful in itself nor against public policy, that has acquired a pecuniary value, becomes a property right that is entitled to protection as such. The Courts have frequently exercised this right. They have never refused to do so when the facts show that the failure to exercise equitable jurisdiction would permit unfair competition in trade or in any matter pertaining to a property right" (citing the *International News Service* case, *supra*).

The Court granted the injunction to the plaintiff "as the owner of the property right existing in the characters represented in such figures and names" (p. 432).

It is perhaps desirable to comment briefly on several other cases cited by petitioner as holding that news, as such, is not subject to protection.

While "news", as such, is not subject to copyright, its "piracy" from the gatherer will be enjoined until its dissem-

ination by the gatherer and until its commercial value as live news is gone. *Davies* v. *Bowes* (209 F. 53) cited by petitioner (Brief, p. 53) involved only a question of whether a piece of fiction, printed in a newspaper as news and copyrighted, was entitled to copyright protection against the use of the story in a drama, long after the publication. The Court held there was no copyright since the fiction was printed and offered to the public as news.

Tribune Company v. *A. P.* (116 F. 126) cited by petitioner (Brief, pp. 56, 57, 58) is purely a copyright case and was so decided (and the case was urged before the Supreme Court in the *International News Service* case, 248 U. S. at pp. 217, 219). The first publication would of course terminate the common law copyright, but the Supreme Court in the *International News Service* case emphatically states that the question before it was not a copyright question but a question of the right to protection during the very process of dissemination, which necessarily continued for some hours after the first technical publication. In the *Tribune* case no question of unfair competition or unjustified interference with another business was presented. Incidentally, the petitioner is mistaken in saying the defendant therein was the present complainant. The present complainant had not been organized at that time.

Atlantic Monthly Publishing Co. v. *Post Publishing Co.* (27 F. (2d) 556) cited by petitioner (Brief, p. 61) held that the plaintiff was not entitled to an injunction since its right in an article by Alfred E. Smith had already terminated, *by the terms of the agreement with the plaintiff.*

Dodge Corporation v. *Comstock,* 251 N. Y. S. 172, cited by petitioner (Brief, p. 60) is a case of the misappropriation of confidential news. The quotation by petitioner is a dictum and is from the dissenting opinion in the *International News Service* case when in the Circuit Court of Appeals (245 F. 244, 253).

Assuming that there is a quasi property in live news during the period of its normal dissemination, as held by this Court in the *International News Service* case, it is apparent.

that the petitioner in the present case, under the allegations of the complaint, is guilty of a misappropriation of such property.

C. The Complaint States a Cause of Action Based on Defendant's Interference With a Lawful Business Without Justification.

We think the two preceding subheads establish complainant's right to injunctive relief, first, because the defendant is unfairly competing in the advertising and news fields, and, second, because defendant is infringing on what equity regards as a property right in news as between the parties. In view of the considerable discussion and argument which has arisen in the case with respect to the precise definition of competition and the precise boundaries of the property right in news after first publication, we think it is pertinent, although perhaps superfluous, to point out that the complainant's right to injunctive relief rests on a broader ground than unfair competition or a specific property right in news reports.

The basic right of complainant and its members is the right to carry on a lawful business without interference; and this right has consistently been held to be a property right such as to afford a basis for equity jurisdiction. The interference is not actionable if it is merely a consequence of defendant's proper exercise of his own rights; in other words, the interference must be without justification. But the defendant is bound to act in accordance with the maxim *sic utere tuo ut alienum non laedas* (as stated by this Court in the *International News Service* case at p. 241). The most frequent justification for interference with another's business is competition—and competition is of course a *prima facie* justification since favored by public policy. But competition is not a justification if it is unfair. This is the origin and the sustaining principle of the law of unfair competition.

Accordingly, the plaintiff's right to relief depends, first, on interference with its business, and, second, on lack of

justification therefor on the part of the defendant. There is no dispute about the fact of interference with and damage to the business of complainant and its members. For the purposes of the motion to dismiss, the allegations of such interference and damage must be taken as true. As far as the fact of interference with and damage to complainant's business is concerned, the present case is indistinguishable from the *International News Service* case, *supra*.

It follows that the matter of competition is relevant only in so far as it affects the defendant's justification for pirating complainant's news reports. Competition constitutes a *prima facie* justification, and renders it necessary for the complainant to show that the competition is unfair. As heretofore indicated, we think the defendant clearly has the *prima facie* justification of competition, but that this justification is defeated with equal clearness by the unfairness of the competition. Even if it could be maintained that defendant was not competing with the complainant since it charged nothing to its listeners, this would have no effect except to deprive the defendant even of its *prima facie* justification, and would therefore put the defendant under the necessity of showing some other justification. Such a justification is in fact suggested in the claim that defendant is performing a public service; but before dealing with this alleged justification, we shall briefly refer to the authorities showing that the law of unfair competition is simply a phase of the broader law of unfair or unjustifiable interference with a lawful business.

Much of the early discussion of the subject of unjustified interference with a lawful business centered about the case of *Keeble* v. *Hickeringill* (1707), 11 East 574, note. The plaintiff conducted a business in wild fowl, using for the purpose a decoy pond which he owned. The defendant, intending to injure the plaintiff and deprive him of his profit, used to resort to a position on his own land close to the plaintiff's decoy pond and there shoot off a gun "whereby the wild fowl were frighted away and did forsake the said pond." In allowing the plaintiff to recover in an action on

the case, the Court based its decision on the broad ground that "he that hinders another in his trade or livelihood is liable to an action for so hindering him." The Court recognized that *fair* competition would have afforded the defendant a justification as indicated by the following quotation:

> "But if a man doth him damage by using the same employment, as if Mr. Hickeringill had set up another decoy on his own ground near the plaintiff's and that had spoiled the custom of the plaintiff, no action would lie, because he had as much liberty to make and use a decoy as the plaintiff."

The *Keeble* case evoked a prolonged discussion as to whether and how far a malicious injury to, or interference with, another's business would cause an act otherwise legal to become illegal. Thus, the subject was discussed at great length in the celebrated case of *Allen* v. *Flood,* App. Cas. 1 (1898). An echo of the discussion appears in the dissenting opinion of Mr. Justice Brandeis in the *International News Service* case, *supra,* in which he argues that the actionable unfairness in unfair competition "involves either fraud or force or the doing of acts otherwise prohibited by law," or, in cases of simulated competition, the "deliberate and wanton destruction of plaintiff's business" (p. 258).

The prevailing opinion in the *International News Service* case, however, gave a broader scope to the doctrine of the *Keeble* case (not cited by the Court). Referring to the business of making news known to the world, this Court said in the *International News Service* case, *supra:*

> "The parties are competitors in this field; and, on fundamental principles, applicable here as elsewhere, when the rights or privileges of the one are liable to conflict with those of the other, each party is under a duty so to conduct its own business as not unnecessarily or unfairly to injure that of the other. *Hitchman Coal & Coke Co.* v. *Mitchell,* 245 U. S. 229, 254" (pp. 235-236).
>
> "* * * The right to acquire property by honest labor or the conduct of a lawful business is as much entitled to

> protection as the right to guard property already acquired * * * It is this right that furnishes the basis of the jurisdiction in the ordinary case of unfair competition" (pp. 236-237).
>
> "Stripped of all disguises, the process (of defendant in pirating news) amounts to an unauthorized interference with the normal operation of complainant's legitimate business precisely at the point where the profit is to be reaped, in order to divert a material portion of the profit from those who have earned it to those who have not * * *" (p. 240).

This Court further emphasized the breadth of the ground on which its decision rested by its citation of the *Hitchman* case, *supra,* in which the defendant labor union appropriated no profits of the plaintiff but was enjoined from inducing the plaintiff's employees to join the union contrary to their agreement with the plaintiff. Again, in commenting on the principle that "palming off" is not essential to give a right of action, this Court said (pp. 241-242):

> "But we cannot concede that the right to equitable relief is confined to that class of cases. In the present case the fraud upon complainant's right is more direct and obvious * * * Instead of selling its own goods as those of complainant, it substitutes misappropriation in the place of misrepresentation and sells complainant's goods as its own.
>
> "Besides the misappropriation, there are elements of imitation, of false pretense, in defendant's practices * * * but these elements, although accentuating the wrong, are not the essence of it."

There are a great variety of cases holding that an unjustified or unfair interference with or injury to a lawful business is actionable, despite the absence of such conventional features as "passing off" and competition. The cases are too numerous and too uniform to call for exhaustive citation. We think it may be useful, however, to group a few of the typical cases.

(a) In the following cases of unfair interference with a lawful business, the unfairness consisted in the appropriation of a business system or the like, although there was no "passing off": *Fonotipia, Ltd.* v. *Bradley,* 171 F. 951; *Meyer* v. *Hurwitz,* 5 F. (2d) 370 (App. Dis. 10 F. 2d 1019); *Prest-O-Lite Co.* v. *Davis,* 209 F. 917, aff'd 215 F. 349; *National Telephone Directory Co.* v. *Dawson Manufacturing Co.,* 214 Mo. App. 683 (263 S. W. 483).

In the *Fonotipia* case, the defendant reproduced records from phonographic matrices of the plaintiff, thereby saving the expense of royalties to artists, etc.; the court upheld plaintiff's right to injunctive relief on the ground that the defendant's acts constituted an appropriation of the plaintiff's property as distinguished from strict competition. The matrices were not secured by any breach of trust as was the news information in some of the ticker cases.

In the *Hurwitz* case, the plaintiff had a system of selling coin-operated vending machines for postcards which he specially designed to fit the machine and which he sold exclusively to purchasers of such machines. The defendant made postcards to fit plaintiff's machines and solicited the trade of plaintiff's machine owners. The court granted a preliminary injunction on the ground that the defendant was unfairly appropriating or encroaching on the plaintiff's business system, although he did not pass off his postcards as being of the plaintiff's make.

In the *Prest-O-Lite* case, the defendant was selling gas, not by passing off his goods as plaintiff's, but by obtaining and using plaintiff's convenient exchangeable tanks as a method of taking over plaintiff's customers. The court upheld plaintiff's right to an injunction on the ground that, irrespective of palming off or competition, the defendant was in fact appropriating the plaintiff's gas exchange system, which was a part of the plaintiff's business property.

In the *National Telephone Directory Company* case, the defendants were preparing to place false covers on the telephone directories (which the plaintiff printed and in which

the plaintiff had the right to sell advertising space) and to sell advertising space on such false covers. In holding that the petition stated a cause of action for an injunction, the court remarked that the defendants' scheme was "more than unfair competition; it amounts to an actual appropriation of the plaintiff's property by the defendants to their own business purposes". The plaintiff was held entitled to an injunction regardless of any passing off of defendants' goods as the goods of the plaintiff.

The present petitioner (Brief, pp. 18-19) and the District Court (R. p. 488) have interpreted the case of *Cheney Brothers* v. *Doris Silk Corporation,* 35 F. (2d) 279, cert. den. 281 U. S. 728, as limiting the scope of the *International News Service* case. In that case the court refused to grant an injunction under circumstances which the present petitioner purports to find similar to those in the present case, but which are obviously radically different. The plaintiff there obtained annually at considerable cost a large number of silk patterns for the ensuing season. The defendant copied such patterns as proved to be popular and sold them without any passing off. The defendant asked an injunction against such copying of its patterns to apply for the duration of the season. The Court refused to extend the doctrine of the *International News Service* case to the case before it. The patterns in question were concededly not such as could be protected by copyright. We think the protection of silk patterns from copying or near-copying presents practical difficulties of an obvious nature which do not exist with respect to the protection of live news. Furthermore, while it might fairly be said that a substantial extension of the *International News Service* case would be necessary in order to cover the *Cheney Bros.* case, no real extension is necessary to cover the present case.

Petitioner refers to *Reichelderfer* v. *Quinn,* 287 U. S. 315, as confirming the limitation upon the scope of the *International News Service* case (Petition, pp. 18, 19). But the *Quinn* case merely held that adjoining owners acquired no

right to have Rock Creek Park in Washington remain a park. This Court said (p. 319):

> "Beyond the traditional boundaries under common law only some imperative justification in policy will lead the courts to recognize in old values new property rights. Cf. International News Service vs. Associated Press, 248 U. S. 215 with Cheney Bros. vs. Doris Silk Corporation 35 F. (2d) 279."

That this Court has not repudiated or limited the doctrine of the *International News Service* case is apparent from the *Schechter* case (295 U. S. 495, 531-2) in which this Court, in discussing the meaning of "Codes of Fair Competition", pointed out that the doctrine of unfair competition is not confined to cases of "palming off", but applies to "misappropriation as well as misrepresentation, to the selling of another's goods as one's own—to misappropriation of what equitably belongs to a competitor", citing the *International News Service* case.

(b) In the following cases of unfair interference with a lawful business, the unfairness consisted in an encroachment upon the plaintiff's good name or good will although there was no competition: *Peninsular Chemical Co.* v. *Levinson,* 247 Fed. 658 (C. C. A. 6); *American Products Co.* v. *American Products Co.,* 42 Fed. (2d) 488; *Vogue Company* v. *Thompson-Hudson Co.,* 300 Fed. 509 (C. C. A. 6); *Wisconsin Electric Co.* v. *Dumore,* 35 Fed. (2d) 555 (Cert. denied 282 U. S. 218); *Wall* vs. *Rolls-Royce of America,* 4 Fed. (2d) 333; *Fox Company* v. *Glynn,* 191 Mass. 344, 78 N. E. 89.

In the *Levinson* case, the plaintiff conducted a drug store, using the name "Penslar"; the defendant sold "Penslar" cigars and asserted a justification on the ground that the plaintiff did not sell cigars. In upholding an injunction, the court held that the purpose and effect of defendant's activity were to encroach upon the plaintiff's good name and goodwill, and stated (p. 661):

> "* * * We know of no principle which will forbid malicious destruction of this kind to a competitor and permit it to a stranger."

In the *American Products Company* case, the plaintiff's name had acquired a secondary meaning in connection with its business of non-carbonated beverages. The defendant used the same name but sold only carbonated beverages. The court regarded it as settled law that "actual market competition is not an essential element of what has come to be known as 'unfair competition'" (citing cases), and enjoined the defendant on the ground that it was encroaching upon the plaintiff's goodwill.

In the *Vogue Company* case, the plaintiff in connection with its style magazine used the letter "V" in "Vogue" with the picture of a girl in the "V." The defendant sold hats bearing the label "Vogue" also with a picture of a girl in the "V." The defendant thus gave the impression that his hats were in some way sponsored by the plaintiff; but there was no competition. In enjoining the defendant, the court said (p. 512):

> "But there is no fetish in the word 'competition.' The invocation of equity rests more vitally on the unfairness."

In the *Dumore* case, the plaintiff used the name "Dumore" on its products which did not include washing machines; the defendant applied the name to washing machines only; and the plaintiff's right to an injunction was upheld on the ground that the defendant was encroaching on the plaintiff's goodwill.

In the *Wall* case, the court, at the instance of a manufacturer of motor cars, enjoined a radio tube maker from using the name "Rolls-Royce Tube Company", holding that there was "an unfair attempt to appropriate the plaintiff's goodwill and fair name" and that this fact was not affected by the absence of competition between the parties.

In the *Glynn* case, the defendant wholesaler sold bread imitating plaintiff's product, and justified the practice on the

ground that he did not deceive the retailers to whom he sold. In upholding the plaintiff's right to an injunction the court said:

> "Such a fraud need not be an active fraud, in any other sense than in the willful refusal to recognize the right of the party, who has acquired a reputation for his goods, to have the benefit of the confidence which he has earned."

(c) In *Walter Baker & Company* v. *Sanders*, 80 Fed. 889, a case of unfair interference with a lawful business, the unfairness consisted in the sale of imitative goods by a defendant who was acting as an agent for another party and did not himself obtain the profit of which the plaintiff was deprived, but this was held to be no ground for refusing an injunction (see Nims on Unfair Competition, Third Edition, p. 973).

In *Borden's Ice Cream Co.* v. *Borden's Condensed Milk Co.*, 201 F. 510, cited in this connection by petitioner (Petition, p. 16), there was no competition since one party was selling ice cream (or about to sell ice cream) and the other milk; and the only question remaining, therefore, was whether the defendant was injuring the plaintiff by use of the name "Borden" in a non-competitive business. That such an injury may be actionable has been re[illegible]edly held.

(d) In the following cases of unfair int[illegible]nce with a lawful business, the unfairness consisted in labor activities such as picketing and boycotting, which lacked the justification of reasonable advancement of the defendant's own interests; and in these cases there was, of course, no competition, no passing off, and no appropriation of profits: *Steinert and Sons* v. *Tagen*, 207 Mass. 394 (93 N. E. 584); *American Foundries* v. *Tri-City Council*, 257 U. S. 184; *Casey* v. *Cincinnati Typographical Union*, 45 Fed. 135; *Gray* v. *Building Trades Council*, 91 Minn. 171 (97 N. W. 663).

(e) In the following cases of unfair interference with a lawful business, the unfairness consisted in libelous state-

ments affecting the plaintiff's business: *Dehydro Inc.* v. *Tretolite Co.*, 53 Fed. (2d) 273; *Farquhar Co.* v. *National Harrow Co.*, 102 Fed. 714 (C. C. A.).

(f) In *Davis* v. *New England Railway Publishing Co.*, 203 Mass. 470 (89 N. E. 565), another case of unfair interference with a lawful business, the unfairness consisted in the wilful exclusion of plaintiff's name from a trade directory of reputable express companies. On demurrer, the Court held that the plaintiff was entitled to equitable relief on the ground that the exclusion of plaintiff's name constituted an unjustifiable injury to plaintiff's business. Obviously the defendant was not competing with the plaintiff, and, so far as appeared, he derived no profit from the exclusion of plaintiff's name.

(g) In the following cases of unfair interference with a lawful business, the unfairness consisted in the fact that the defendant's acts, although such as would be justifiable if they constituted genuine competition, were in fact unjustifiable because they constituted a merely simulated competition, the real purpose of which was to injure or destroy plaintiff's business: *Tuttle* v. *Buck*, 107 Minn. 145 (119 N. W. 946); *Dunshee* v. *Standard Oil Co.*, 152 Iowa 618 (132 N. W. 371), affd. 165 Iowa 625; *Boggs* v. *Duncan-Schell Furniture Co.*, 163 Iowa 106 (143 N. W. 482).

A large number of cases involving unfair interference with lawful business are collected in Chapters 12 and 19 of Nims on Unfair Competition, Third Edition, the latter chapter being cited in the *Schechter* case, *supra*. The general question of interference with business as a cause of action, and the extent to which the defendant's furtherance of his own interests is a justification, were considered at length in *Mogul Steamship Co.* v. *McGregor*, 23 Q. B. D. 598, in which the Court said (p. 613):

> "Now, intentionally to do that which is calculated in the ordinary course of events to damage, and which does in fact damage another in that person's property or trade, is actionable if done without just cause or excuse."

and see *Parkinson Co.* v. *Trades Council*, 154 Cal. 581 (98 Pac. 1027), and *Huskie* v. *Griffin*, 75 N. H. 345 (74 Atl. 595).

We think it is manifest that the doctrine of the foregoing cases demonstrates the right of the present complainant to injunctive relief. Regarded from the standpoint of unfair interference with complainant's business, it is obvious, in the first place, that there is an interference with plaintiff's business by the defendant. This is not a case where the *fact* of interference can be disputed by showing that defendant is not competing, is not "passing off", is not misleading the public or is deriving no profit. From an objective standpoint, the factual interference remains the same whether the defendant's activities are to be described as an appropriation, competition, or pure beneficence. Furthermore, the factual interference is of the same nature as the interference enjoined in the *International News Service* case, *supra*. In the second place, turning to the justification, the defendant is either competing or not competing with the complainant. If the defendant is competing, this furnishes a *prima facie* justification; but the justification is defeated because the defendant's activities in pirating and disseminating news constitute an unfairness of the same nature as that involved in the *International News Service* case. If the defendant is not competing, then the unfairness remains, but without even the colorable justification of a competitive interest.

D. The Defendant's Interference With Complainant's Business is not Justified by Any Public Interest.

Petitioner devotes considerable space to the matter of the public interest in the wide and rapid dissemination of news. As the Circuit Court of Appeals said in this connection (R. p. 562):

> "In its final analysis this argument of KVOS to sustain the dismissal rests on the proposition that the bill in International News Service v. Associated Press, supra, would have been dismissed by the Supreme Court if the

> International News Service's members then had had a much faster distribution of the pirated news and had relied entirely on advertising income from their papers."

There is no point in the discussion of this public interest unless it is assumed that respondent has some right which would be protected but for the alleged public interest. More specifically the issue comes down to this. Petitioner is obliged to concede that The Associated Press (and its members) are entitled, under the *International News Service* case, to the protection of their business of disseminating their gathered news as against a news agency which, acting as a middleman, distributes news pirated from the respondent to the direct disseminators of news; but petitioner contends that the public interest prevents the extension of this doctrine to the protection of the business against a direct disseminator himself (and it may be remarked that the petitioner claims to be, in part, a news gathering agency, as found by the District Court, R. p. 511).

The Circuit Court of Appeals in its opinion (R. p. 571) says:

> "So far as concerns the case against piracy presented by the bill, the speed of the radio's distribution of news makes the injury done the press in the performance of its business and civic activities the more effective and certain."

Public interest might be better served by competition in the independent gathering of news than by the pilfering by one news gatherer from another. If the public interest requires that Associated Press news be rendered available to radio stations for the purpose of more rapid dissemination, it would be necessary to enact legislation, and, if such legislation were constitutional in other respects, it would still be unconstitutional if it deprived a news agency of its news or its rights therein without providing for due process and just compensation.

Petitioner discusses at some length the "German" case in which a newspaper, obtaining news of the Graf Zeppelin from the radio station's broadcast, thereafter published the news in a special issue of its paper and the Court refused to grant an injunction against such use of broadcast news (Petition pp. 12, 33-40, 50). That case is not controlling here because the dissemination of the news by the radio station which was the owner of the news had been completed when the newspaper had "lifted and published" the news, and hence it might well be argued that there was no encroachment upon the radio station's dissemination of the news. The German Court also based its reasoning in part upon the fact that news as such was not copyrightable in Germany; and recognized no distinction between the law of copyright and the law of unfair competition such as this Court definitely recognized in the *International News Service* case. Thus, the German Court would apparently have decided against The Associated Press in the *International News Service* situation on the ground that the Press, having no copyright, could have no other protection. It may further be remarked that the German law is apparently contrary to the law established in the *Shanley* and similar cases above cited. Thus, the Landgericht at Dantzig (2 Archiv. Fuer Funkrecht, 1929, p. 572, as translated in 1 Journal of Radio Law, April 1931, p. 146) held that the rendition of a copyrighted musical composition on a loud speaker in a restaurant did not constitute a performance for profit within the meaning of the German copyright statute.

In this connection, it may be noted that petitioner urges (Brief, pp. 13, 52) that the Courts should not grant relief because Congress refused to legislate upon this matter in 1884, and suggests that legislation is needed before the Court can grant the requested relief. Perhaps one reason against legislative protection is that equity can afford the necessary protection—and more flexibly according to the circumstances, and it may be added that the argument based on the bill before Congress in 1884 was unsuccessfully urged on this court in the *International News Service* case, 248 U. S. 215, 264, 265.

POINT IV.

The preliminary injunction was rightfully granted.

It is not altogether clear that petitioner even intends to bring the question of the preliminary injunction before this Court. Petitioner's statement of the scope of its argument (Brief, p. 29) seems to indicate that it does not. However, the brief and petition are full of references to matters not open to consideration on the motion to dismiss the bill, and perhaps we must therefore draw the inference that the petitioner means to attack the preliminary injunction should the bill of complaint be upheld.

The motion for a preliminary injunction was submitted on affidavits. Those in behalf of The Associated Press described one hundred and eighty-two piratings by defendant petitioner in which appear one hundred and fifty-three articles containing four hundred and twenty-five identical paragraphs pirated by KVOS (R. pp. 73-465). Besides this there were twenty-seven broadcasts similar to the news items from which they were alleged to be rewritten.

The District Court held (R. p. 480) the showing as to "piracy" was clear and convincing (See Findings, R. p. 511). The Circuit Court of Appeals said (R. p. 575-579) that the record showed continued pirating. Since defendant petitioner refused to desist from its practice after repeated requests (R. pp. 15, 28-30), the preliminary injunction was proper.

The Circuit Court of Appeals in its opinion (R. pp. 579, 580) compares the record here with that in the *International News* case on the preliminary injunction, saying

> "the preliminary injunction there granted was ordered sustained by the Supreme Court on a showing much less comprehensive and detailed than in the record here. Less than thirty instances of piracy are there described as compared with over five times that number here."

It appears, as pointed out by that Court (R. p. 577), that the piracies continued up to the time of the institution of this action. And as said in the opinion of the Circuit Court of Appeals (R. pp. 579, 580)

> "It appears, and it is not denied, that complainant's income from its distribution of its news to the papers serving KVOS' radio area is $6,000 per month, or $72,000 per annum. Since the thirty cases of piracy were sufficient to show a threatened damage warranting a preliminary injunction in the International case the one hundred fifty-three are sufficient here. The Supreme Court there, without evidence of the loss of a subscriber, took notice that such a practice threatened harm to the circulation of the association's member papers requiring injunctive relief. We take similar notice here that such pirating may well affect both their subscriber and advertising income."

In an attempt to show that the occasion for an injunction is trivial, the petition asserts that its station has "at the most" a range limited within "a five-mile radius" (Petition, p. 1). There is no foundation in the record for this amazing statement. Quite to the contrary, petitioner's own affiant, L. H. Darwin, states under oath that the petitioner's "Newspaper of the Air" (R. p. 66)

> "* * * * reaches a greater audience than any newspaper could do so, in that the people on farms in the Counties of Whatcom, Skagit, San Juan, Snohomish and Island depend almost exclusively upon this informative news service for information on news and political events * * *"

It will be seen, from any standard atlas, that the nearest point in Snohomish County is more than thirty miles from Bellingham, while the furthest point is more than ninety miles away.

CONCLUSION.

Respondent submits that the decision of the Circuit Court of Appeals was correct and in accord with the weight of authority, and that the decree below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 28.—October Term, 1936.

KVOS, Inc., Petitioner, *vs.* The Associated Press. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[December 14, 1936.]

Mr. Justice Roberts delivered the opinion of the Court.

This suit was brought to enjoin petitioner, the proprietor of a radio station at Bellingham, Washington, from appropriating, using, or disseminating news gathered by the respondent or its members during the period such news has commercial value to respondent and its members. The prayers were for temporary and permanent relief. The district court directed the petitioner to show cause why an injunction should not be granted and entered a temporary restraining order.

In summary, the allegations of the bill follow.

Respondent is a New York corporation and petitioner a Washington corporation; "the damage to which complainant is being subjected . . . is in excess of the sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs, and the amount involved herein and in controversy herein is in excess of said sum of Three Thousand ($3000.00) Dollars, exclusive of interest and costs."

The respondent, a membership corporation, is composed of proprietors or representatives of newspapers published throughout the United States whose business is the gathering, by its own instrumentalities, and by exchange with members, and other means, news, intelligence, and information from all over the world for the benefit of its members, and distribution of the material so gathered amongst them for newspaper publication, conformably to the by-laws.

The respondent has representatives in every important capital and city in the world and has reciprocal arrangements for interchange of news with many important agencies in foreign countries; has more than twelve hundred members, each owning or repre-

senting a daily newspaper, each supplying respondent, as required by the by-laws, with the news gathered locally by the newspaper he represents; the cost of respondent's transactions, amounting yearly to many millions of dollars, is equitably divided among the members; the association's service to members is of financial and business importance to them, due to its promptness, accuracy, and impartiality; the by-laws require that the news furnished shall remain confidential until publication has been fully accomplished by all members.

The petitioner conducts a radio station at Bellingham, Washington, and, as part of its daily broadcast, sends out, three times a day, morning, noon, and evening, what is styled "The Newspaper of the Air" in which petitioner announces what it claims to be, and what usually is, the leading and most interesting news of the day. The Bellingham Herald, published at Bellingham, is a member of the association and, under the by-laws, the respondent is entitled to be furnished by the Herald with all the news from the territory served by that paper; the Seattle Post Intelligencer and the Seattle Daily Times are published at Seattle, Washington, and are represented by memberships in the association which has the same rights to news gathered by those papers.

The petitioner broadcasts news as part of its business and, by so doing, enhances the profits obtained from advertising broadcasts; the newspapers affiliated with the respondent derive a large portion of their revenues from the sale of advertising space, the value of which depends in great measure upon the freshness and interest of the news furnished by them. The petitioner, in the conduct of its station, has become, and is, a competitor of respondent and its members in the obtaining and early distribution of news, for the purpose of popularizing advertising.

The petitioner has no organization of its own for gathering news, but adopts the practice of "pirating" news gathered by the respondent and its members. This practice consists in procuring copies of the Herald, the Post Intelligencer, and the Daily Times and broadcasting parts, or all, of items therein published, whether gathered by these newspapers or received by them from the respondent, the repetition being sometimes verbatim and sometimes a rearrangement of the wording. The copies of the three newspapers do not reach their subscribers for some time (in some cases as much

as twenty-four hours) after publication; whereas petitioner, promptly obtaining the papers, is able to pirate and broadcast their contents and to anticipate the receipt of the news by the newspapers' subscribers. This practice constitutes unfair competition with the respondent; wrongfully deprives the respondent of the just benefits of its labors and expenditures; similarly injures respondent's members; and prejudices the respondent with its members.

The petitioner, though repeatedly requested to desist from the practice, has refused so to do, although neither the association nor any member has granted permission to make use of the news gathered by them; and the continuance by the petitioner of its practice will increasingly cause irreparable injury and damage to the respondent because the effort and expenditures to gather and obtain news will be rendered largely without reward or value so far as concerns the territory served by petitioner's station.

Prior to the return day of the order to show cause why a temporary injunction should not issue, the petitioner filed a motion to dismiss, assigning the following grounds, amongst others: the bill fails to recite facts entitling the plaintiff to the relief prayed and is without equity; there is a non-joinder of parties plaintiff since the bill discloses that the Bellingham Herald, Seattle Post Intelligencer, and Seattle Daily Times are necessary parties; the court is without jurisdiction because the matter in controversy does not exceed three thousand dollars, exclusive of interest and costs, and an inspection of the allegations of the complaint shows the complainant cannot recover any amount in excess of three thousand dollars or any other amount and the sum named in the ad damnum clause of the complaint is not a true statement of complainant's damages and is not alleged in good faith, the facts being that the amount paid to the complainant for furnishing the Associated Press news in the city of Bellingham, to any of its members, is fixed and determined by the size of the city's population, and is not affected by any other condition and complainant has not lost any amount and never will lose any amount by reason of this controversy, and defendant is not a competitor of complainant in any sense of the word; the Bellingham Herald is the real party in interest and the Associated Press has no interest in the cause.

Affidavits were presented in support of and in opposition to the granting of an injunction, and counsel were heard upon the prayer for preliminary injunction and upon the motion to dismiss. The court found the allegations as to citizenship of the parties were true; found "the amount in controversy herein, by reason of defendant's motion to dismiss, must be construed to be in excess of $3,000.00, exclusive of interest and costs"; found the facts as to the business and conduct of the parties substantially as alleged in the complaint; but found that the petitioner had not interfered with the normal operation of respondent's business or diverted any of respondent's profit.

As conclusions of law the court held that it had jurisdiction of the parties and the subject matter "since defendant's motion to dismiss admits for the purpose of pleading all facts well pleaded in the bill of complaint and particularly the necessary diverse citizenship between complainant and defendant and the allegation that there is involved in the controversy herein more than $3,000.00, exclusive of interest and costs" and that "the complainant is a proper party to prosecute this action on its own behalf and on behalf of its members." Based upon certain of the findings of fact the court concluded the acts of the petitioner did not amount to unfair competition with respondent or any of its members and did not violate their property rights; held, therefore, that the complaint failed to state facts sufficient to constitute a cause of action; vacated the temporary restraining order, refused a preliminary injunction, and granted the petitioner's motion to dismiss with prejudice.[1]

The Circuit Court of Appeals reversed[2] and ordered that a preliminary injunction issue restraining the petitioner from appropriating and broadcasting any of the news gathered by the respondent for the period following publication in respondent's newspapers during which the broadcasting of the pirated news to petitioner's most remote auditors may damage the business of respondent's papers in procuring and maintaining their subscriptions and advertising. On the merits the court thought the case controlled by *International News Service* v. *Associated Press*, 248 U. S. 215. Dealing with the petitioner's insistence that the amount

[1] 9 F. Supp. 279.
[2] 80 F. (2d) 575.

in controversy was not shown to exceed three thousand dollars the court held that the *International News Service* case required the conclusion that the respondent was in competition with the petitioner because the decision in that case indicated that the profit seeking business of the constituent newspapers is an integral part of the corporate purpose of the respondent; and that "The several millions of dollars here alleged to be invested in the Association's business (the bill contains no such allegation) may well be damaged to the extent of $3,000 by the pirating practices described." After referring to the character and scope of the respondent's activities the court states:

"It is obvious that the business of gathering and distributing to members, *before* profitable publication, could conceivably be damaged to the extent of $3,000 by the misappropriation and premature publication of the news material. To hold otherwise would warrant the inference that no corporation could be damaged by a wrongful attack on its business, when that business happened to be run at no profit or at a loss. Also, we are unable to hold irrational the claim that the piracy caused a $3,000 damage to the Association's quasi property right in the news."

Although the decision with respect to the amount in controversy was assigned as error in this court, the parties have in the main directed their arguments to the merits; the respondent insisting that *International News Service* v. *Associated Press* fully sustains the decree below; the petitioner contending this cause may be distinguished from the one there adjudicated, or, if not, that decision should be modified. We have no occasion to consider the soundness of these conflicting contentions, for we hold that in the circumstances the respondent had the burden of showing that the case was within the District Court's jurisdiction, and failed to carry it.

The bill seeks redress for damage to the respondent's business and for damage to the business of some or all of its members. The right for which the suit seeks protection is, therefore, the right to conduct those enterprises free of the alleged unlawful interference by the petitioner. No facts are pleaded which tend to show the value of that right. The complaint contains nothing to the purpose save the general statement that the damage to which the respondent is being subjected is in excess of three thousand dollars and the amount involved is in excess of that sum. Such a formal allegation is sufficient, unless the bill contains others which qualify or detract from

it in such measure that when all are considered together it cannot fairly be said that jurisdiction appears on the face of the complaint, in which case the suit should be dismissed by the court *sua sponte*[3] or upon the defendant's motion.[4] In this case the formal allegation is not reenforced or strengthened by other portions of the complaint; neither is it neutralized or weakened by qualifying or detracting allegations. In effect it stands alone. Therefore the court would not have been bound to dismiss upon a motion based solely on alleged insufficient pleading of the amount in controversy; though it might, of its own motion, have entered upon an inquiry to ascertain whether the cause was one over which it had jurisdiction.[5] But where the allegations as to the amount in controversy are challenged by the defendant in an appropriate manner, the plaintiff must support them by competent proof.[6] The petitioner's motion was an appropriate method of challenging the jurisdictional allegations of the complaint. It did not operate merely as a demurrer, for it did not assume the truth of the bill's averments and assert that in spite of their truth the complaint failed to state a case within the court's jurisdiction. On the contrary the motion traversed the truth of the allegations as to amount in controversy and in support of the denial recited facts dehors the complaint. This could have been done by answer but the time for answer had not arrived when the rule to show cause was issued and petitioner was faced with the possibility of an injunction. The motion required the trial court to inquire as to its jurisdiction before considering the merits of the prayer for preliminary injunction. And in such inquiry complainant had the burden of proof.[7] The only attempt to meet that burden is a reply affidavit filed on behalf of respondent, wherein it is deposed "that the payments made by newspapers for said news sold to them by complainant in the territory served by said radio station is upwards of $8,000 per month, which is being imperilled and jeopardized by the acts of defendant . . . by its unlawful and wrongful appropriation of complainant's news,

[3] *Mansfield, C. & L. M. Ry.* v. *Swan*, 111 U. S. 379, 382, 383; *Bucyrus Co.* v. *McArthur*, 219 Fed. 266.

[4] *Coal Co.* v. *Blatchford*, 11 Wall. 172; *Ladew* v. *Tennessee Copper Co.*, 179 Fed. 265; affirmed 218 U. S. 357.

[5] Act of March 3, 1875, § 5, c. 137, 18 Stat. 470, 472; Jud. Code, § 37, 28 U. S. C. § 80; *McNutt* v. *General Motors &c. Corp.*, 298 U. S. 178, 182, 184.

[6] *McNutt* v. *General Motors &c. Corp.*, *supra*, p. 189.

[7] *McNutt* v. *General Motors &c. Corp.*, *supra*, p. 189.

and said sum greatly exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, and complainant is in danger of losing said memberships and payments if defendant's practices in respect to pirating said news is not enjoined.' This deposition must be read in connection with the statement in the bill that the respondent makes no profit from furnishing news to its members but equitably divides the expense amongst them. The association cannot therefore lose the $8,000 in question. If the three newspapers in the affected territory cease to pay the sum, they will save it, not lose it, and, as to any other damage they may suffer from petitioner's competition, the affiant is silent. Assuming, without deciding, that in the circumstances disclosed the respondent has standing to maintain a suit to redress or prevent damage caused its members by petitioner's conduct, the allegation of possible damage to them is wholly inadequate, because the asserted danger of loss of members is a mere conclusion unsupported by even a suggestion that withdrawal has been threatened by any newspaper, and no intimation is given of the character or extent of the damage they would suffer by such withdrawal. The respondent having failed to support the allegations as to amount in controversy the District Court should have dismissed the bill.

The suggestion is made in the respondent's argument, and in the opinion below, that, as the allegations in the *International News Service* case, *supra*, were substantially like those of the bill now before us, this court must have been of opinion that the District Court had jurisdiction in the *International* case or it would not have considered the merits. But in that case the answer did not challenge the jurisdiction, there was no assignment of error raising the question and no argument on the subject was presented to this court. "The most that can be said is that the point was in the case if anyone had seen fit to raise it. Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster* v. *Fall*, 266 U. S. 507, 511.

The Circuit Court of Appeals sustained the District Court's jurisdiction on the ground that the finding upon that point was not without support, and the appellate tribunal could not say it was wrong, in view of the magnitude of the respondent's operations and expenditures. As pointed out in *McNutt* v. *General Motors*

&c. Corporation, supra, at pages 180 and 181, these factors are irrelevant upon the issue of the value of the right for which protection is here sought.

Since the allegation as to amount in controversy was challenged in appropriate manner, and no sufficient evidence was offered in support thereof, the bill should have been dismissed. *McNutt* v. *General Motors &c. Corp., supra,* p. 190. The Circuit Court of Appeals had jurisdiction of the appeal and as the District Court lacked jurisdiction its decree dismissing the bill should have been affirmed on that ground.

The decree of the Circuit Court of Appeals is reversed and the cause is remanded to the District Court with directions to dismiss the bill of complaint for want of jurisdiction.

A true copy.

Test:

Clerk, Supreme Court, U. S.